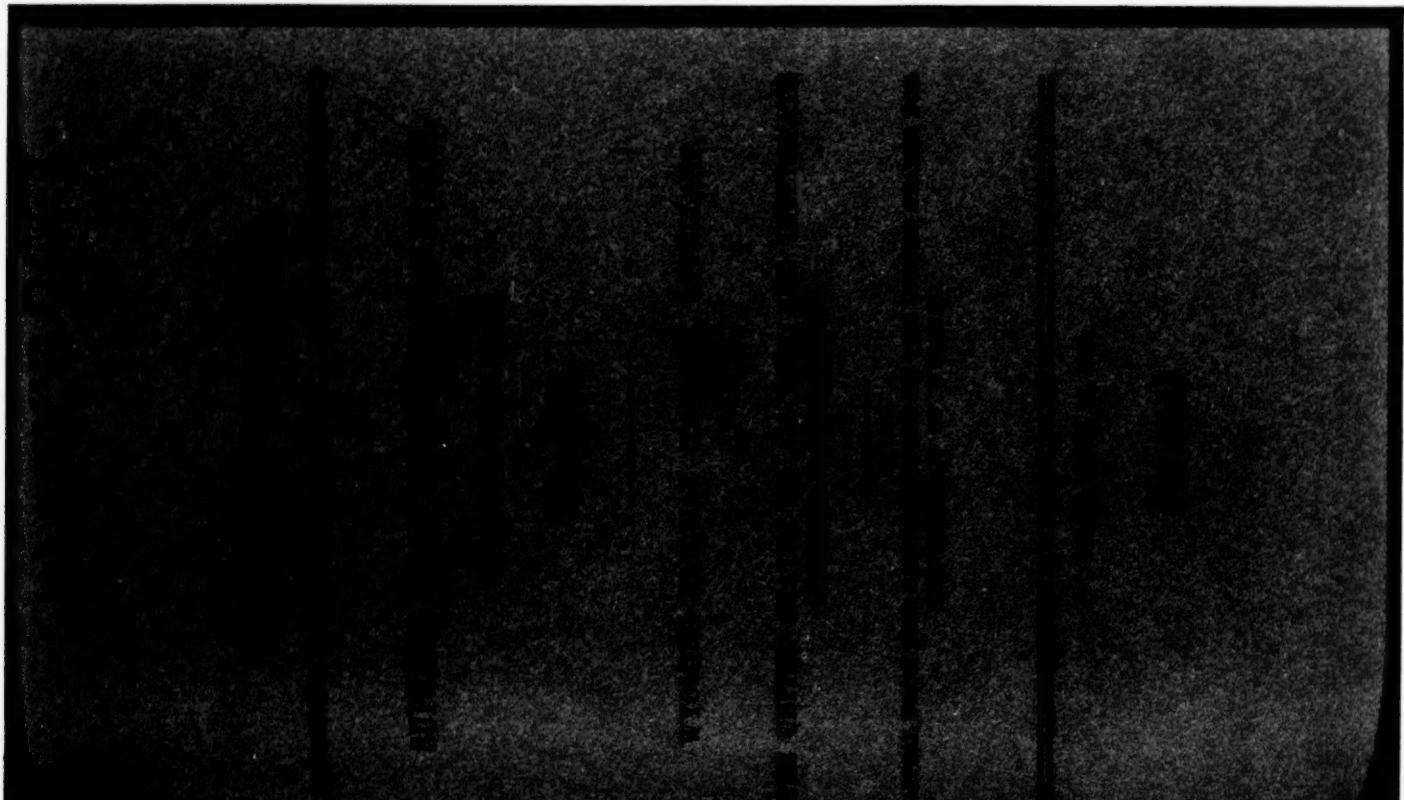


(28,844)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 338.

WYOMING RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WYOMING.

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Pleas in the District Court of the United States for the District of Wyoming, Sitting at Cheyenne.

Be it remembered, that heretofore, towit on the sixteenth day f January, in the year of our Lord one thousand nine hundred nd twenty-two, came Wyoming Railway Company and filed in the id court its Bill of Complaint.

And said Bill of Complaint is in words and figures as follows, wit:

In the District Court of the United States, District of Wyoming.

No. 1235. Civil.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Bill of Complaint.

William T. Alden,
Attorney for Plaintiff.

Filed Jan. 16, 1922.
CHARLES J. OHNHAUS,
Clerk.

In the District Court of the United States, District of Wyoming.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Bill of Complaint.

Plaintiff, Wyoming Railway Company, a corporation, suing on own behalf and on behalf of other carriers affected by the order the Interstate Commerce Commission, hereinafter complained , who may desire to join herein and assume their proportional rt of the costs and expenses, present this bill of complaint against e United States, and for cause of action says:

I.

The plaintiff, Wyoming Railway Company, is a corporation duly ganized and existing under and by virtue of the laws of the

State of Wyoming; and is a common carrier engaged in the transportation of freight by railroad in interstate commerce.

4 II.

This is a suit to suspend and set aside an order of the Interstate Commerce Commission and is brought pursuant to the provisions of the Judicial Code of the United States, and of the Act of October 23, 1913, Chapter 32, 38 Statutes at Large, 220. The matter in controversy in this suit exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

III.

The order which the plaintiff seeks to have suspended and set aside is an order made by the Interstate Commerce Commission on November 3, 1921, in its Docket No. 11608, entitled, Pioneer Lumber Company et al. v. Director General, as Agent, Chicago, Burlington & Quincy Railroad Company et al., reported in Volume 64 Interstate Commerce Commission Reports, beginning at page 485. A copy of said order and the report of the said Interstate Commerce Commission filed in connection therewith is marked Exhibit "A" and made a part of this petition.

IV.

The parties upon whose petition said order of the Interstate Commerce Commission was made are, Pioneer Lumber Company and Buffalo Lumber Company, both of which are corporations existing under and by virtue of the laws of the State of Wyoming, and are residents of said State of Wyoming, and both of which are engaged in the lumber and fuel business in Buffalo, Wyoming.

V.

Said Pioneer Lumber Company and Buffalo Lumber Company, hereinafter referred to as the petitioner Lumber Companies, on or about July 7, 1920, filed a complaint with the Interstate
5 Commerce Commission wherein they alleged that the rates charged by this plaintiff and other connecting carriers by railroad since June 25, 1918, on interstate carload shipments of lumber and lumber products, from points in Idaho, Montana and Washington, to Buffalo and Ucross, Wyoming, and on intrastate shipments of brick, in carloads, from Sheridan, Wyoming, to Buffalo were unreasonable, unjustly discriminatory and unduly prejudicial. Said lumber companies prayed in their said petition for reparation on past shipments and for the establishment of lower interstate rates on lumber for the future.

VI.

The said plaintiff herein and other carriers by railroad, who were the named defendants in the petition of said petitioner lumber companies to the Interstate Commerce Commission, duly filed their answers to the said petition and thereafter, and on September 16, 1920, the Interstate Commerce Commission held a hearing at Spokane, Washington, at which time the several parties to the proceeding before the Interstate Commerce Commission appeared before it and presented their evidence, both in support of and in denial of the allegations of said petition of said lumber companies.

VII.

Thereafter, and on November 3, 1921, Division 4 of the Interstate Commerce Commission, consisting of Commissioners Meyer, Daniels and Esch, made public its report in said proceeding before the Commission as reported in Volume 64, Interstate Commerce Commission Reports, beginning at page 485, and issued its order based on said report, which said order is the order which it is sought to suspend and set aside in this proceeding.

6

VIII.

In its said report and order, the Interstate Commerce Commission found that no evidence was offered in support of the allegation of unjust discrimination, and further found that the interstate rates assailed on lumber and lumber products were not, and are not unreasonable; that during the period of federal control the intrastate rates on brick in issue were not unreasonable or otherwise unlawful; but that the failure of the defendants to extend the blanket rates on lumber applicable to points on the Chicago, Burlington & Quincy Railroad Company to the other points of Buffalo and Ucross on the line of the Wyoming Railway, while at the same time maintaining the blanket rates to other more distant points in the blanket territory on the main and branch lines of the Chicago, Burlington & Quincy Railroad Company, or on independent connecting lines, other than the Wyoming Railway Company, but without specifying what other independent connecting lines are thus sought to be described, is, and for the future will be, unduly prejudicial. By said order the Interstate Commerce Commission required the defendants in the proceedings before it, among which were the Wyoming Railway Company, plaintiff herein, on or before February 24, 1921, upon notice to the Commission and to the general public by not less than thirty days filing and posting, to establish and thereafter to maintain and apply to the transportation of lumber and lumber products from points in Idaho, Montana and Washington, to Buffalo and Ucross, Wyoming, rates which do not exceed the rates contemporaneously maintained from the same points to

Clearmont and Sheridan, Wyoming, and other points in the blanket territory on the line of the Chicago, Burlington & Quincy Railroad Company and independent connecting lines other than the Wyoming Railway Company, but without specifying what other independent connecting lines are thus sought to be described.

7

IX.

Plaintiff shows that the plaintiff, Wyoming Railway Company, is a short line of railroad independently owned and operated, which extends a distance of 28.6 miles from Clearmont, Wyoming, its junction with the line of railroad of the Chicago, Burlington & Quincy Railroad Company, to Buffalo, Wyoming, and that Ucross, Wyoming, is a local station on the line of said Wyoming Railway Company located a distance of approximately ten miles southwest of Clearmont, Wyoming. Plaintiff further shows that said towns of Buffalo and Ucross are not served by any other railroad company except the Wyoming Railway Company.

X.

Plaintiff further shows that the manner of making freight rates on lumber from points in the State of Idaho and other states to the local stations of Buffalo and Ucross on the Wyoming Railway Company, is to apply the rate applicable from point of origin to Clearmont, Wyoming, which is the junction point between the Chicago, Burlington & Quincy Railroad Company and the Wyoming Railway Company, and to add thereto the lawfully published rates of the Wyoming Railway Company from said junction point of Clearmont to Buffalo, or Ucross, Wyoming, as the case may be.

XI.

Plaintiff further shows that the Wyoming Railway Company was incorporated in the State of Wyoming on May 26, 1909, but that its line of railroad was not completed until 1918. Plaintiff further states that the operation of said Wyoming Railway Company has not been profitable, but that at all times during its operation, and at present, it has been and is being operated at a loss. Plaintiff

8 shows that during the year 1918, said Wyoming Railway Company incurred an operating deficit of $46,408.72 and an operating deficit of $24,917.80 in 1919; that no interest has been paid on its bonds for nearly three years; that no dividends have ever been paid on its stock; and that its officers or directors have received no salaries. Plaintiff further states that the line of the Wyoming Railway Company extending from Clearmont to Buffalo is operated through a sparsely settled country with no present prospect of increased traffic and that in operating from Clearmont to Buffalo for the distance of 28.6 miles, it is necessary to haul traffic over severe and heavy grades for the reason that the town of Buffalo is nearly one thousand feet higher than the town of Clearmont.

XII.

Plaintiff shows that the Interstate Commerce Commission in its said report admitted the existence of all of the facts herein alleged, and found that said facts point to the conclusion that neither the combination rates on lumber nor the component thereof were, or are, unreasonable per se, and that said Interstate Commerce Commission specifically found that no evidence had been offered in support of the allegation of unjust discrimination. But plaintiff alleges that the Interstate Commerce Commission, after making said findings, then undertook to make and did make and issue an order wherein and whereby the said rates on lumber from points of origin in the States of Idaho, Montana and Washington, to Clearmont, Wyoming, the junction between the Chicago, Burlington & Quincy Railroad Company and the Wyoming Railway Company, should be extended with no additional compensation whatever to either carrier to the local points of Ucross and Buffalo, Wyoming, on the line of the Wyoming Railway Company under the guise of ordering the removal of undue prejudice against said Pioneer Lumber Company and Buffalo Lumber Company which the Interstate Commerce Commission
9 pretended to find to exist. Said plaintiff alleges that in making said finding and order, the Interstate Commerce Commission exceeded its powers and acted in an arbitrary and void manner.

XIII.

Plaintiff shows that the grounds on which the Interstate Commerce Commission undertook to enter said findings and order, were that the Chicago, Burlington & Quincy Railroad Company, publishes the same blanket rate which is applicable at Clearmont, Wyoming, on lumber in carloads, to destinations located over a considerable stretch of its main line, and also extends that rate to points located on its branch lines. Plaintiff alleges that said finding of the Interstate Commerce Commission was made upon the theory that under these circumstances a shipper situated on an independent branch line connected with this blanketed stretch of main line of another carrier, is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the main line's owned branches.

XIV.

Plaintiff further shows that said order of the Interstate Commerce Commission is arbitrary and void for the reason that it is specifically stated by the Interstate Commerce Commission that it is entered upon the theory that Buffalo and Ucross are entitled to the blanket rates applicable to Clearmont, Wyoming, a junction point between the Chicago, Burlington & Quincy Railroad Company and the Wyoming Railway Company, in spite of the fact that the Interstate Commerce Commission specifically found that neither the combina-

tion rates applicable to Buffalo and Ucross, nor any of the components thereof, were, or are, unjust or unreasonable, or unjustly discriminatory.

10

XV.

Plaintiff further states that the Wyoming Railway Company does not participate in the transportation of lumber and other timber products from points in the States of Idaho, Montana and Washington to Clearmont, Wyoming, or any other point on the line of the Chicago, Burlington & Quincy Railroad Company within the territory wherein that company maintains the blanket rate to which the Interstate Commerce Commission refers, and that the Wyoming Railway Company has no power or authority to dictate in any way what the rate shall be from said producing points in Idaho and other states to points on the line of said Chicago, Burlington & Quincy Railroad Company.

XVI.

Plaintiff, Wyoming Railway Company, shows that under the guise of removing a pretended undue prejudice against the Pioneer Lumber Company and the Buffalo Lumber Company, for which this plaintiff is in nowise responsible, the Interstate Commerce Commission has undertaken to deprive it of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States. Particularly, this plaintiff shows that it is found by said Interstate Commerce Commission that its present operations are being conducted at a financial deficit, and that the rates on lumber which it now charges are not unreasonable, or unjustly discriminatory, and that if it is required to become a party to a reduction in rates which are not now unreasonably high, and which will not now enable said plaintiff to earn a fair rate of return upon its property, it will be presently deprived of its property without due process of law, and without just compensation. That no agreement has been made, or can be made, with the Chicago, Burlington &
11 Quincy Railroad Company and other trunk lines for a division of the joint rates on lumber and lumber products to points on the line of railroad of this plaintiff which will yield to this plaintiff a sum sufficient to pay for the cost of the service, or even a rate that will equal the present local rate of this plaintiff on lumber and lumber products. That as yet the Interstate Commerce Commission has not fixed any definite rule of divisions between trunk lines and independently owned short line railroads under the Transportation Act of 1920; that such question is now pending before the Interstate Commerce Commission in two or more cases. That the statement of the Interstate Commerce Commission in its report, wherein it pretended to avoid the unlawfulness of their finding, that is, the statement that "the question of divisions, and whether or not the Wyoming should receive its full local or only a part thereof out of the blanket rate, is not here in issue," will in nowise serve to avoid

for the plaintiff the deprivation and taking of its property without due process of law and without just compensation.

XVII.

Plaintiff further shows that the defendant common carriers in the said proceeding before the Interstate Commerce Commission other than the Wyoming Railway Company are without power under the law to extend present blanket rates on lumber now applicable to Clearmont, Wyoming, and other points on their lines, to the local stations of Ucross and Buffalo, Wyoming, on the line of the Wyoming Railway Company, unless the Wyoming Railway Company consents thereto. Plaintiff shows that the Wyoming Railway Company declines and refuses to permit other said carriers to extend such blanket rates to points on its line, but instead insists that the service which it performs justifies higher rates to points on its
12 lines than to points on the lines of other carriers. Plaintiff further states that the effort of the Interstate Commerce Commission to compel and require the Wyoming Railway Company to permit carriers other than itself to establish said blanket rates to points on its line, is arbitrary and void.

XVIII.

Plaintiff further avers that said order is not based upon any substantial evidence which will support or justify it, since all of the evidence offered shows that the rate in question is not unreasonable and does not discriminate against either persons or localities, and that there is no competition between retail lumber dealers, including petitioner lumber companies, situated considerable distances apart in the territory involved. The finding of the Commission purports to be based solely upon a new and unlawful conception of undue prejudice as defined by the Interstate Commerce Act, and is designed to accomplish by indirection the reduction of rates which are specifically found to be neither unreasonable nor unjustly discriminatory.

XIX.

Plaintiff further states that the Wyoming Railway Company can not be jointly or severally held responsible for any undue prejudice in connection with the rates on lumber from producing points in Idaho, Montana and Washington, to points on the lines of other railway companies where it does not participate in the transportation, nor join in the publication of the said rates, and that any order made in respect to the Wyoming Railway Company in these circumstances is unsupported by any substantial evidence and is contrary to the law, exceeds the power of the Interstate Commerce Commission and is arbitrary and void, as to the Wyoming Railway Com-
13 pany, and as the carriers other than the Wyoming Railway Company cannot comply with the order of the Commission

entered without the consent of the Wyoming Railway Company, the order is likewise arbitrary and void as to them.

XX.

Plaintiff further shows that the order of the Interstate Commerce Commission is arbitrary and void in that it seeks to merge the lines of all railroads operating in a particular district, without regard to their independent ownership and the independent character of their operation, and against the desire and consent of the owners of said railway companies, in plain contravention of the Fifth Amendment of the Constitution of the United States.

XXI.

Plaintiff further avers that said order is contrary to the law and in violation of the powers conferred upon the Commission in this, that the rate so assailed is not unduly prejudicial within the purview of said Act under the record made before the Commission. Said record shows absolutely no undue prejudice within the condemnation of the statute and said order as to undue prejudice under the record upon which it purports to have been made, is in excess of the constitutional power of the Commission, and is for that reason void.

XXII.

Plaintiff further avers that said Commission erred in its interpretation of the law in holding that because a trunk line carrier publishes the same blanket rate on lumber in carloads to destinations located over a stretch of its main line, and also extends that rate to points on its branch line, shippers located on another and independently owned and operated short line of railroad, such as the Wyoming Railway Company, connecting with this blanketed
14 stretch of main line, are automatically entitled to the blanket rate.

XXIII.

Plaintiff further shows that said order of the Interstate Commerce Commission is arbitrary and void because it is so vague and indefinite in its scope and operation as to be wholly meaningless and unintelligible in that it fails to describe with any precision whatever the blanket territory to which it refers or the independently operated connections of carriers other than the Wyoming Railway Company which are said to have rates in effect that must be contemporaneously applied to local stations on the line of the Wyoming Railway Company.

XXIV.

Plaintiff avers that irreparable damage will accrue from the enforcement by the Commission of the said order for the reason that

this plaintiff will be required and compelled to transport lumber in carloads in interstate commerce at the rates which the Interstate Commerce Commission had undertaken to require to be established upon thirty days' notice effective on and after February 24, 1922, which said rates are lower than the present rates, and that this plaintiff will be without remedy to collect from shippers and consignees of said lumber the difference between said rates and the present rates in the event that it shall finally be determined that said order of the Interstate Commerce Commission is null and void and unenforceable unless and except said order be forthwith enjoined, restrained and suspended by this Honorable Court.

15 XXV.

Said order in said Docket No. 11608 is in excess of the power conferred upon said Interstate Commerce Commission by the Interstate Commerce Act:

(*a*) Said order declares that the plaintiff, Wyoming Railway Company, has subjected the petitioner lumber companies to undue prejudice by reason of rates on lumber maintained by other railroad companies in which rates said Wyoming Railway Company does not join or participate.

(*b*) Said order determines the measure of rates on lumber to points on the line of the Wyoming Railway Company by the rates in effect to points on the lines of other railway companies in which latter rates the Wyoming Railway Company does not join or participate.

(*c*) Said order requires rates on lumber from producing points in the States of Idaho, Montana and Washington, to points on the line of the Chicago, Burlington & Quincy Railroad Company to be extended to points on the line of the Wyoming Railway Company with no additional compensation for the increased service involved in the transportation of said lumber from the junction point between said Chicago, Burlington & Quincy Railroad Company and said Wyoming Railway Company to local points on said Wyoming Railway Company.

XXVI.

Said Interstate Commerce Commission in its proceeding in said Docket No. 11608 has applied erroneously rules of law:

(*a*) In said report in said Docket No. 11608, which said report is made a part of said order in said proceeding, by direct reference thereto, the Interstate Commerce Commission specifically found that
16 no evidence was offered by said petitioner lumber companies in support of their allegation of unjust discrimination, and that neither the rates on lumber from producing points in Idaho and other states to points on the Wyoming Railway Company, nor the components thereof, were or are unreasonable, yet said In-

terstate Commerce Commission without any valid findings to support it, and in direct contradiction of said findings so made, has undertaken to enter, and has entered and issued, an order wherein this plaintiff and other carriers are required to establish and maintain the same rate on lumber to points on the Wyoming Railway Company from producing points in the States of Idaho, Montana and Washington as the Chicago, Burlington & Quincy Railroad Company and its connections other than the Wyoming Railway Company may, or shall, contemporaneously maintain to Clearmont, Wyoming, the junction point at which said Chicago, Burlington & Quincy Railroad Company delivers said lumber to the Wyoming Railway Company when destined to points on the line of said latter company.

(*b*) Said Interstate Commerce Commission in direct contravention of law and in an erroneous application of the provisions of the Interstate Commerce Act, made the following finding in its said report in said Docket No. 11608:

"Since the trunk line carrier publishes the same blanket rate on lumber in carloads to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch lines a shipper situated on an independent branch line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. It may be cheaper to perform a given service for equal distances to points located on a trunk line or on its branch lines than to points on an independent line. It is not cheaper for the Burlington to perform the service from Edgemont to Spearfish than for the Wyoming Company to perform the service from Clearmont to Buffalo. The mileage from Edgemont to Spearfish is over 4.5 times greater than to Buffalo. Buffalo and Ucross are entitled to the blanket rates."

17 And based upon said erroneous interpretation of law as incorporated in its order by direct reference thereto, said Interstate Commerce Commission has ordered the plaintiff, Wyoming Railway Company, to join in the establishment of the same rate on lumber to local points on its line of railroad as common carriers other than the Wyoming Railway Company shall contemporaneously maintain to the junction point between the Wyoming Railway Company and the Chicago, Burlington & Quincy Railroad Company.

(*c*) Said Interstate Commerce Commission in its order in said Docket No. 11608 has required that plaintiff, Wyoming Railway Company, shall transport lumber from Clearmont, Wyoming, its junction with the Chicago, Burlington & Quincy Railroad Company to local stations on its line, with no additional charge to the shipper or consignee of said lumber over and above the rate from point of origin in Idaho, Montana and Washington to said Clearmont, Wyoming, in spite of the fact that additional and expensive service is involved in transporting said lumber from Clearmont to local points

on the Wyoming Railway Company, and that under present rates said Wyoming Railway Company is not earning any return whatever on its property devoted to said transportation.

XXVII.

Said order in said Docket No. 11608 is arbitrary and void, because issued without any lawful findings to support it and because there was no substantial evidence before said Interstate Commerce Commission to sustain said order.

(*a*) Said report and order show that they were issued by the said Commission solely in furtherance of an illegal method of rate making, to wit, that short lines of railroad independently operated, must join in the establishment of through rates to local stations on their lines of railroad which shall be the same as rates contemporaneously applicable from points on other lines of railroad to its junc-
18 tion point with such of the other said lines of railroad.

(*b*) Said report and order show on their face that they were issued without any substantial evidence before the Commission to support allegations of unreasonableness or unjust discrimination existing by reason of the rates of any of the plaintiffs.

(*c*) Said report and order show on their face that they were issued without any evidence whatever of any violation of any section of the Interstate Commerce Act by reason of the rates of the plaintiff, Wyoming Railway Company.

(*d*) Said report and order show on their face that they are in direct contravention of the Fifth Amendment to the Constitution of the United States and that said order is arbitrary and void in that it requires the Wyoming Railway Company and other carriers, to furnish a new and additional service of transportation over and above that which they have voluntarily undertaken to furnish, with no additional compensation therefor.

(*e*) Said report and order show on their face that they are arbitrary and void in that they were issued in furtherance of a mistaken theory of the law formerly entertained by the Interstate Commerce Commission, which has been recently condemned, overruled and set aside by the Supreme Court of the United States in a proceeding before it entitled, Central Railroad of New Jersey v. United States, October Term, 1921, No. 436, decided December 5, 1921, 42 Supr. Ct. Repr. 80.

Wherefore, as this plaintiff is without adequate remedy under the law for its protection in said matter, plaintiff files this, its bill, and prays that the usual process may issue out of the office of the clerk of this court to the defendant, the United States, and that notice be given to the Interstate Commerce Commission, as required
19 by law, that the defendant be required to answer this bill, and that upon a hearing thereof the said order of the Inter-

state Commerce Commission made in pursuance of the report of the Commission, dated November 3, 1921, be annulled, suspended, set aside and held for naught; that a restraining order be issued herein restraining the defendants from making said order effective in any way, or to any extent whatsoever, and that an interlocutory injunction, which shall upon final hearing be made perpetual, be entered annulling, suspending and setting aside said order of November 3, 1921, and enjoining the enforcement thereof; and that plaintiff be given such other and further and different relief as to your Honors may seem meet, and the plaintiff will ever pray.

W. F. ALDEN,
Attorney for Plaintiff.

#1110, 134 So. La Salle St., Chicago, Ill.

20 STATE OF ILLINOIS,
County of Cook, ss:

W. T. Alden, being first duly sworn, on oath says that he is Secretary and General Counsel of the Wyoming Railway Company, plaintiff herein, and that he is authorized to make this affidavit on behalf of said plaintiff, that he has read the above and foregoing bill of complaint, knows the contents thereof and that the same is true in substance and in fact.

W. T. ALDEN.

Subscribed and sworn to before me this fourteenth day of January, 1922.

[Seal of Hertha Ebert, Notary Public, Cook County, Ill.]

HERTHA EBERT,
Notary Public, Cook County, Illinois.

My commission expires June 8, 1924.

21 EXHIBIT A.

Interstate Commerce Commission.

No. 11608.

PIONEER LUMBER COMPANY et al.

v.

DIRECTOR GENERAL, as Agent Chicago, Burlington & Quincy Railroad Company, et al.

Submitted July 16, 1921. Decided November 3, 1921.

1. Rates on lumber and lumber products, in carloads, from points in Idaho, Montana and Washington to Ucross and Buffalo, Wyo., found not unreasonable, but unduly prejudicial. Nonprejudicial rates prescribed. Reparation denied.

2. Rates on brick, in carloads, from Sheridan, Wyo., to Buffalo, during federal control, found not unreasonable or otherwise unlawful.

J. B. Campbell, Frank Lyon and R. S. Brown, for complainants.
F. G. Dorety and R. J. Hagman for all defendants except Wyoming Railway; Burt Griggs and Alden, Latham & Young for Wyoming Railway.

Report of the Commission.

Division 4, Commissioners Meyer, Daniels and Esch.

By DIVISION 4:

Exceptions were filed by complainants and defendants to the report proposed by the examiner, and the case was orally argued before us.

22 Complainants, the Pioneer Lumber Company and the Buffalo Lumber Company are corporations engaged in the lumber and fuel business at Buffalo, Wyo. By complaint filed July 7, 1920, they allege that the rates charged since June 25, 1918, on interstate carload shipments of lumber and lumber products from points in Idaho, Montana and Washington, to Buffalo and Ucross, Wyo., and on intrastate shipments of brick, in carloads, from Sheridan, Wyo., to Buffalo were unreasonable, unjustly discriminatory and unduly prejudicial. The prayer is for reparation and the establishment of interstate rates on lumber for the future. No evidence was offered in support of the allegation of unjust discrimination. Rates will be stated in amounts per 100 pounds.

Buffalo, with a population of 1,800, is the terminus of the Wyoming Railway, 28.6 miles southwest of Clearmont, Wyo., the junction with the Chicago, Burlington & Quincy, hereinafter called the Burlington. Ucross, with a population of about 100, is also on the Wyoming 10 miles southwest of Clearmont. Wyoming was organized in 1910, but construction was not completed until 1918.

The shipments moved over defendants' lines and apparently the applicable rates were collected upon the Clearmont combination. On shipments moving during federal control complainants seek reparation to the basis of the rates which would have been applicable if the increase provided in general order No. 28 of the Director General of Railroads had been applied to the total combinations instead of to the separate components. On subsequent shipments the reparation claimed is based upon the rates contemporaneously in effect to Clearmont.

The rates on lumber and lumber products in the northwest have, for many years, been blanketed both as to points of origin and destination. In the so-called Northwest Lumber Cases, 14 I.

23 C. C. 1, 23, 41, 51, decided June 2, 1908, we prescribed reasonable rates to Clearmont which is embraced in the so-called blanket territory. The components to Clearmont on lumber and

lumber products here in issue are the rates thus prescribed increased under the general increases of 1918 and 1920.

General order No. 28 provided that rates on lumber and lumber products should be increased 25 per cent, maximum 5 cents, and that rates on brick should receive a flat increase of 2 cents. By applying these increases to each factor instead of to the through combinations an additional charge of 4 cents to Buffalo and 2 cents to Ucross on lumber and lumber products and 2 cents on brick to Buffalo resulted. Complainants contend that the Director General never intended that the increases should be applied to each factor, and that this is shown by his freight rate authority No. 10 of July 2, 1918, which directed, among other things, that the tariffs be revised so that the increases in general order No. 28 would be applicable to the total rates. The Wyoming increased its rates under general order No. 28 and the record shows that on June 29, 1918, it was released from federal control. Its rates were not changed in accordance with freight rate authority No. 10. With respect to the rates on brick complainants rely solely upon the fact that each factor of the combination was increased under general order No. 28. The reasonableness of these rates cannot be determined solely from the method of their construction. Defendants show that the assailed rates on brick compare favorably with other similar rates in this general territory.

On June 25, 1918, the rate on lumber from the coast group to Clearmont was 45 cents and from the Spokane group 38 cents. From Clearmont to Buffalo the rate was 20 cents, making combination rates of 65 and 58 cents, respectively. The present coast-group rate is 81.5 cents and the present Spokane rate is 72.5 cents. The factors up to Clearmont are 56.5 and 47.5 cents, respectively. Com-
24 plainants submitted exhibits which showed the ton-mile and car-mile earnings on shipments of lumber. These earnings were compared with earnings that would have accrued if the shipments had moved to other destinations in the blanket territory which took the same rates as Clearmont. For example, a shipment of fir lumber from National, Wash., to Buffalo, 1,270 miles, earned 10.2 mills per ton-mile and under the present rates it would earn 12.8 mills. If this shipment had moved to Spearfish, S. Dak., 1,556 miles, it would have produced 5.7 mills per ton-mile and would now produce 7.2 mills. The rates to Birds, Colo., 1,676 miles, on this shipment would have yielded 5.3 mills and 6.7 mills, respectively. The factor up to Clearmont on this shipment yielded 7.2 mills and the factor from Clearmont to Buffalo, 14.03 cents per ton-mile. The present 81.5-cent rate from Everett, Wash., to Buffalo, 1,128 miles, based on a load of 63,760 pounds, the average load of fir lumber as given in Increased Rates, 1920, 58 I. C. C. 220, by the West Coast Lumbermen's Association, yields car-mile earnings of 46.06 cents, while the present Everett-Clearmont rate of 56.5 cents produces car-mile earnings of 32.77 cents. If the Clearmont rate were extended to Buffalo, the car-mile earnings would be 31.93 cents. The rate from Everett to Birds yields car-mile revenue of 21.45 cents.

Defendants maintain that these comparisions are of little value

because blanket rates are compared with blanket rates and the specific earnings vary with the distances used. They contend that the average point of origin and the average point of destination in the respective blankets should be considered, and that as the factors up to Clearmont were prescribed by us in 1908, and subsequently increased under general order No. 28 and the general increase of 1920, they are in and of themselves reasonable.

It appears that the Wyoming incurred in 1918 an operating deficit of $46,408.72 and $24,917.89 in 1919; no interest has been paid on its bonds for nearly three years; no dividends have ever
25 been paid on its stock; its officers and directors have received no salaries. Its line is only 28.6 miles in length and Buffalo is nearly 1,000 feet higher than Clearmont. The road is operated through a sparsely settled country with no present prospect of increased traffic.

The above facts point to the conclusion that neither the combination rates nor the components thereof were or are unreasonable per se. The question remains as to whether the rates resulted in undue prejudice.

The Pioneer Lumber Company has lumber yards at Sheridan, 38 miles north of Buffalo by dirt road, and at Ucross as well as at Buffalo, while the Buffalo Lumber Company has yards at Buffalo and at Kaycee, Wyo., about 60 miles south of Buffalo. The testimony shows that farmers within 8 miles north of Buffalo generally buy their lumber in Buffalo, but those farther north buy at Sheridan. There is a divide known as Tunnel Hill about midway between Sheridan and Buffalo, and save for the more favorable freight rates to Sheridan the record indicates that Buffalo would probably receive the business of those who live south of the divide. Ulm, Wyo., is on the Burlington just west of Clearmont. Competitors of the Pioneer Lumber Company located at Ulm and Clearmont are enabled by reason of their lower rates to secure trade which otherwise might go to Ucross. Casper, Wyo., is on the Big Horn division of the Burlington about 135 miles south of Buffalo and 75 miles south of Kaycee, and takes the blanket rate. The Buffalo Lumber Company's yard at Kaycee is not served by railroad, and is approximately halfway across country, between Buffalo and Casper. This complainant hauls its lumber from Buffalo to Kaycee by truck. Just prior to the hearing oil was discovered about 10 miles south of Kaycee, and the Buffalo Lumber Company insists that the blanket rate should be extended to Buffalo in order that it may use its yards at that point and haul lumber to Kaycee so that it may be able to compete in the oil field with its Casper competitors.

26 Spearfish and Deadwood, S. Dak., are located on the branch line of the Burlington that connects with the main line at Edgemont, S. Dak. Edgemont is 124.4 miles distant from Clearmont, and Spearfish and Deadwood are 130 and 107 miles distant, respectively, from Edgemont. Both Spearfish and Deadwood have the blanket rates. Birds, Colo., about 400 miles beyond Clearmont, and located upon the Great Western, an independent line 82 miles long, takes the blanket rates. Complainants content that the fact

that the defendants voluntarily apply the blanket rates to these points, and the further fact that defendants willingly maintain the extensive blanket, while refusing to extend blanket rates to points on the Wyoming result in undue prejudice.

Defendants state that they extend blanket rates to points on independent short lines only when compelled to do so by competition. The Burlington extends the blanket rate from a point about 70 miles south of Billings, Mont., for a distance of about 600 miles through Alliance, Nebr., to Denver, Colo. This blanket was originally established to meet competition on lumber from California via the Harriman lines. At that time the Big Horn division of the Burlington had not been completed and to compete with the Union Pacific at Denver, the Burlington had to haul lumber received from the Great Northern and the Northern Pacific via its Sheridan route through Alliance. If the former rate had not been blanketed, fourth section violations would have been created along the Sheridan line. This would not account for the Burlington's extending the blanket to Spearfish, an additional haul from Edgemont of 130 miles. Competitive reasons compelled the extension of the blanket rates to Birds. The Great Western has two connections with the Union Pacific, one at Eaton, Colo., and one at Kelim, Colo.; two connections with the Colorado & Southern, one at Loveland, Colo., and one at Windsor, Colo., besides the connection with the Burlington at Longmont, Colo. Defendants contend that this competition distinguishes the situations at Birds and at Buffalo. But there is no such car-
27 rier competition at local main-line and branch-line stations on the Burlington in this blanket territory.

Since the trunk line carrier publishes the same blanket rate on lumber in carloads to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch lines a shipper situated on an independent branch line connecting with this blanketed stretch of the main line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. It may be cheaper to perform a given service for equal distances to points located on a trunk line or on its branch lines than to points on an independent line. It is not cheaper for the Burlington to perform the service from Edgemont to Spearfish than for the Wyoming Company to perform the service from Clearmont to Buffalo. The mileage from Edgemont to Spearfish is over 4.5 times greater than that to Buffalo. Buffalo and Ucross are entitled to the blanket rates.

The question of divisions, and whether or not the Wyoming should receive its full local or only part thereof out of the blanket rate is not here in issue.

There is no competition between retail lumber dealers situated at considerable distances apart in this extensive blanket territory. The inhibition of section 3 of the interstate commerce act against undue prejudice applies to localities as well as to shippers at those localities. As was said in Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, at page 233, respecting competition between localities:

Thriving communities, all in the same general section of the country, striving for population, industry and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related.

We find that the interstate rates assailed on lumber and
28 lumber products were not and are not unreasonable; that during the period of federal control the intrastate rates on brick here in issue were not unreasonable, or otherwise unlawful; but that the failure of defendants to extend the blanket rates on lumber to Buffalo and Ucross on the line of the Wyoming Railway, while at the same time maintaining the blanket rates to other more distant points in the blanket territory on defendants' main and branch lines or on independent connecting lines, is and for the future will be unduly prejudicial. Complainants have not shown that they were damaged by any undue prejudice which may have existed in the past. Reparation is therefore denied.

An appropriate order will be entered.

Order.

At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office in Washington, D. C., on the 3d Day of November, A. D. 1921.

No. 11608.

PIONEER LUMBER COMPANY and BUFFALO LUMBER COMPANY.

v.

JAMES C. DAVIS, Director General of Railroads, as Agent; CHICAGO, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Great Northern Railway Company; Northern Pacific Railway Company; Oregon Trunk Railway Company; Spokane, Portland & Seattle Railway Company, and Wyoming Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed
29 a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before February 24, 1922, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of lumber and lumber products, in carloads, from points in Idaho, Montana, and Washington to Buffalo and

Ucross, Wyo., rates which exceed the rates made on the basis prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before February 24, 1922, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of lumber and lumber products from points in Idaho, Montana, and Washington to Buffalo and Ucross, Wyo., rates which do not exceed the rates contemporaneously maintained by them on lumber and lumber products from the same points to Clearmont and Sheridan, Wyo., and other points in the blanket territory on defendants' lines and independent connecting lines.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 4.

[SEAL.] GEORGE B. McGINTY,
Secretary.

30 In the District Court of the United States, District of Wyoming.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Notice.

To Hon. Harry M. Daugherty, Attorney General of United States, Department of Justice, Washington, D. C.: Interstate Commerce Commission, Interstate Commerce Building, Washington, D. C.: Pioneer Lumber, Company, Buffalo, Wyoming: Buffalo Lumber Company, Buffalo, Wyoming:

You and each of you are hereby notified that on Monday, the 16th day of January, 1922, the bill of complaint of the Wyoming Railway Company in the above cause will be filed with the Clerk of said Court, at Cheyenne, Wyoming, and that process will issue as required by law, a copy of which said bill of complaint is herewith served upon you.

You are further notified that on Saturday, the 21st day of January, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, we shall appear before the Honorable T. Blake Kennedy, United States District Judge in and for the District of Wyoming, in the court room of said Court in the City of Cheyenne, Wyoming, and before two other Federal Judges of the United States Court called by the said Judge Kennedy in accordance with the statutes in such case provided, and move the Court to issue a temporary injunction

as prayed for in said bill of complaint, and in support of said motion we shall read the bill of complaint and submit the record,
31 transcript of evidence and exhibits and other proceedings in the case of the Pioneer Lumber Company against the Director General of Railroads, lately pending before the Interstate Commerce Commission, as Docket No. 11608; at which time and place you may appear in opposition to said motion if you so desire.

Dated, January 14, 1922.

WILLIAM T. ALDEN,
Attorney for Complainant.

1110, 134 South La Salle Street,
Chicago, Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

Estelle Lowe, being duly sworn, deposes and says that she mailed a copy of the foregoing notice and copy of the Bill of Complaint therein mentioned, at Chicago, Illinois, on Saturday, the 14th day of January, 1922, to the following:

Hon. Harry M. Daugherty, Attorney General of United States, Department of Justice, Washington, D. C.

Interstate Commerce Commission, Interstate Commerce Building, Washington, D. C.

Pioneer Lumber Company, Buffalo, Wyoming.

Buffalo Lumber Company, Buffalo, Wyoming.

That such notice and bill of complaint was enclosed in an envelope properly addressed to the parties above named, sealed and deposited in the United States mail. Further affiant saith not.

ESTELLE LOWE.

Subscribed and sworn to before me this 14th day of January, A. D. 1922.

[SEAL.]

HERTHA EBERT,
Notary Public.

32 Endorsements: No. 1235 Civil. District Court of United States. District of Wyoming. Wyoming Railway Company vs. United States. Notice. Filed Jan. 16, 1922, Charles J. Ohnhaus, Clerk. William T. Alden, Atty. 1110, 134 South La Salle Street, Chicago, Ill.

33 In the District Court of the United States, District of Wyoming.

WYOMING RAILWAY COMPANY, Compainant,

vs.

UNITED STATES, Defendant.

Order.

This day came the above named complainant by its attorney, A. C. Campbell; also came A. D. Walton, United States Attorney for the District of Wyoming; whereupon, it was moved by complainant's attorney that the Restraining Order as prayed for in the Complaint be heard on the 21st day of January A. D. 1922.

And it appearing to the court that a copy of the written notice of said motion, was, on Saturday January 14th, A. D. 1922, mailed from the City of Chicago, State of Illinois to the Honorable Harry M. Daugherty, Attorney General of the United States; The Interstate Commerce Commission; the Pioneer Lumber Company, and the Buffalo Lumber Company, at their respective offices, and no objection having been made to the granting of said motion by the United States Attorney for the District of Wyoming;

It is ordered, that the application for a Temporary Restraining Order as prayed for in the Bill of Complaint be set for hearing in the courtroom of the United States District Court for the District of Wyoming at 10.00 o'clock in the forenoon of Saturday, January 21st, A. D. 1922.

Done in open court this 16th day of January A. D. 1922.

T. BLAKE KENNEDY,
Judge.

34 Endorsements: 1235 Civil. District Court of United States District of Wyoming. Wyoming Railway Company vs. United States. Order. Filed Jan. 16, 1922. Charles J. Ohnhaus, Clerk. William T. Alden, Atty., 1110, 134 South La Salle Street, Chicago, Ill. A. C. Campbell, Cheyenne, Wyoming.

35 In the District Court of the United States for the District of Wyoming.

No. 1235. Civil.

WYOMING RAILWAY COMPANY, Compainant,

vs.

UNITED STATES, Defendant.

Motion to Dismiss Bill of Complaint.

Comes now A. D. Walton, United States Attorney, for the District of Wyoming, and on behalf of the United States, the defendant above named, moves to dismiss the bill of Complaint of the complainant herein, for the following reasons and upon the following grounds, to wit:

1st. For want of equity.

2nd. That said bill of complaint does not state facts sufficient to constitute a cause of action in equity.

A. D. WALTON,
United States Attorney for the District of Wyoming.

Endorsements: No. 1235 Civil. In the District Court of the United States for the District of Wyoming. Wyoming Railway Company, Complainant, vs. United States, Defendant. Motion to dismiss Bill of Complaint. Filed Jan. 21, 1922. Charles J. Ohnhaus, Clerk. A. D. Walton, United States Attorney for the District of Wyoming. Clyde M. Watts, Asst. United States Attorney for the District of Wyoming.

36 In the District Court of the United States for the District of Wyoming, Saturday, January 21, 1922.

No. 1235. Civil.

WYOMING RAILWAY COMPANY, Plaintiff,

vs.

UNITED STATES, Defendant.

Order Allowing Interstate Commerce Commission to Intervene.

On motion, it is ordered that the Interstate Commerce Commission be permitted to intervene as a defendant in this cause, and to file its answer to the complaint herein.

37 In the District Court of the United States, District of Wyoming.

In Equity.

No. —.

WYOMING RAILWAY COMPANY, Compainant,

vs.

UNITED STATES et al., Defendants.

To the honorable judges of said court:

We hereby enter the appearance of the Interstate Commerce Commission as intervening defendant, and of ourselves as its counsel, in the above-entitled cause.

WALTER McFARLAND.
WALTER McFARLAND,
Counsel for Interstate Commerce Commission.

P. J. FARRELL.
P. J. FARRELL,
Of Counsel.

Washington, D. C.,
January 18, 1922.

Endorsements: In equity. No. 1235 Civil. In the District Court of the United States, District of Wyoming. Wyoming Railway Company, Complainant vs. United States et al., Defendants. Appearance of Interstate Commerce Commission as Intervening Defendant. Filed January 21, 1922. Charles J. Ohnhaus, Clerk. Walter McFarland, Counsel for Interstate Commerce Commission, Washington, D. C. P. J. Farrell, of Counsel.

38 In the District Court of the United States, District of Wyoming.

In Equity.

No. —.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES et al., Defendants.

Answer of the Interstate Commerce Commission.

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and re-

serving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

I.

Answering the allegations contained in the bill of complaint, this intervening defendant, which for convenience will be referred to hereinafter as the Commission, admits and alleges that complainant, Wyoming Railway Company, is a common carrier engaged in the transportation of freight by railroad in interstate commerce; that a complaint was filed with the Commission on July 7, 1920, by the Pioneer Lumber Company and the Buffalo Lumber Company, and was docketed as No. 11608, as alleged in the bill of complaint; that answers to said complaint were filed with the Commission by various defendants named therein; that the full hearing provided for in the interstate commerce act was accorded to all interested parties; that at said hearing a large volume of testimony and other evidence, bearing upon the matters under investigation, was submitted to the Commission for consideration; that subsequently the questions
39 presented for decision were fully argued, both orally and in briefs, and the matters and things involved in said case were submitted to the Commission for determination, whereupon, on November 3, 1921, the Commission determined said questions and made its report, findings, and order in said docket No. 11608, Pioneer Lumber Co. v. Director General, 64 I. C. C., 485, which are attached to the bill of complaint, marked Exhibit A, and are referred to and made a part thereof by paragraph III of said bill.

The Commission further alleges that said findings were and are, and each — them was and is, fully supported and justified by the record before the Commission in said proceeding.

The Commission further alleges that in making said report, findings, and order it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding, including matters covered by the allegations in the petition herein. The Commission further alleges that said report, findings, and order were not made by it either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; and that in making them it did not exceed the authority duly conferred upon it, or exercise that authority in an unreasonable manner.

II.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill herein in so far as they conflict either with the allegations in this answer, or with the statements or conclusions of fact included in the Commission's said report, findings, and order, which are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION.
WALTER McFARLAND,
By WALTER McFARLAND,
Counsel.

P. J. FARRELL.
P. J. FARRELL,
Of Counsel.

40 CITY OF WASHINGTON,
District of Columbia, ss:

B. H. Meyer, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named intervening defendant, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

B. H. MEYER.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia this 18th day of January, 1922.

[SEAL.] ALFRED HOLMEAD.

My Commission expires July 10, 1924.

Endorsements: In Equity, No. 1235 Civil. In the District Court of the United States, District of Wyoming. Wyoming Railway Company, Complainant, v. United States et al., Defendants. Answer of the Interstate Commerce Commission. Filed January 21, 1922, Charles J. Ohnhaus, Clerk. Walter McFarland, Counsel for Interstate Commerce Commission, Washington, D. C. P. J. Farrell, of Counsel.

41 In the District Court of the United States for the District of Wyoming.

Equity. No. 1235.

WYOMING RAILWAY COMPANY, Plaintiff,

vs.

UNITED STATES, Defendant, and INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

Order.

This cause having come on to be heard before the Honorable Robert E. Lewis, Circuit Judge, Honorable John A. Riner and Honorable T. Blake Kennedy, District Judges, upon the application of the

plaintiff for a temporary injunction and restraining order, as prayed for in its said bill of complaint, and upon the motion of the defendant, United States, to dismiss the bill, and upon the answer of the Interstate Commerce Commission, Intervenor, filed herein, in compliance with the provisions of Section 1 of the District Court Jurisdiction Act of October 22, 1913, (38 Statutes at Large, 219). The Court, after hearing the arguments of counsel for the respective parties upon said motions, and being fully advised in the premises, doth order and adjudge as follows, to wit:

1. That the application of the plaintiff for a preliminary injunction, as prayed for in its bill of complaint, be, and the same is hereby denied, to which ruling and order the plaintiff by its counsel in open court duly enters its exceptions.

2. That the motion of the defendant, United States, to dismiss the bill of complaint be, and the same is hereby granted, and said
42 bill is hereby dismissed at the cost of the plaintiff, but without prejudice to the rights of the plaintiff, after its compensation out of the through rates has been determined to file a new bill to test the validity of such division, to which ruling and order the plaintiff in open court by its counsel enters its exception.

3. And thereupon the plaintiff by its counsel having signified its intention to appeal to the Supreme Court of the United States from this order. The Court, at the request of the counsel for the plaintiff fixes the amount of said appeal bond at the sum of Five Hundred dollars ($500.00), said bond to be presented with the plaintiff's assignment of errors and petition for appeal and such bond to be approved by one of the judges of this Court.

Dated this 21st day of January, A. D. 1922.

ROBT. E. LEWIS,
Circuit Judge.
JOHN A. RINER,
T. BLAKE KENNEDY,
District Judges.

Endorsements: Equity No. 1235. In the District Court of the United States for the District of Wyoming. Wyoming Railway Company, Plaintiff, vs. United States, Defendant, and Interstate Commerce Commission, Intervening Defendant. Order. Filed Jan. 21, 1922, Charles J. Ohnhaus, Clerk.

43 In the District Court of the United States for the District of Wyoming.

In Equity.

No. 1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

Petition for Appeal.

To the Honorable Robert E. Lewis, U. S. Circuit Judge; the Hon. orable John A. Riner, U. S. District Judge, and the Honorable T. Blake Kennedy, U. S. District Judge:

Now comes Wyoming Railway Company, a corporation, complainant in the above entitled cause, — feeling itself aggrieved by the final decree and order made and entered in this cause on the 21st day of January, A. D. 1922, denying the application of the complainant for a preliminary injunction, as prayed for in its bill of complaint, and sustaining and granting the motion of the defendant, the United States, to dismiss the bill of complaint, and dismissing the complainant's bill of complaint at its costs, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in its assignment of errors filed herewith, and it prays that this appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based may be duly authenticated by the Clerk of this court and sent to the United States Supreme Court sitting at Washington, D. C. And your petitioner further prays that a proper order*ed* touching the security to be required of it to perfect its appeal be made.

And your petitioner will ever pray.

Dated, February 14th, 1922.

W. T. ALDEN,
A. C. CAMPBELL,
Solicitors for Wyoming Railway Company, Petitioner.

ALDEN, LATHAM & YOUNG,
Of Counsel.

44 Endorsements: No. 1235. United States District Court District of Wyoming. Wyoming Railway Company vs. United States, Defendant, Interstate Commerce Commission, Intervenor. Petition for Appeal to Supreme Court of United States. Filed Feb. 16, 1922, Charles J. Obnhaus, Clerk. W. T. Alden, 134 S. La Salle St., Chicago, Ill., and A. C. Campbell, Cheyenne, Wyoming, Attorneys for Complainant.

45 In the District Court of the United States for the District of Wyoming.

In Equity.

No. 1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

Order Granting Appeal.

This cause coming on to be heard upon the application of the Wyoming Railway Company for an appeal from the decree and order of this Court of January 21, 1922,

It is ordered that the foregoing appeal be and the same is hereby allowed to the said Wyoming Railway Company in accordance with its application therefor this day made to this Court, upon the filing of a bond in the penal sum of Five Hundred Dollars ($500), with good and sufficient surety to be approved by one of the Judges of this court, conditioned that the said Wyoming Railway Company shall prosecute said appeal to effect and answer all damages and costs if said Wyoming Railway Company fail to make said appeal good.

Dated this 16th day of February, 1922.

T. BLAKE KENNEDY,
Judge of District Court.

Endorsements: No. 1235. United States District Court, District of Wyoming. Wyoming Railway Company vs. United States, Defendant, Interstate Commerce Commission, Intervenor. Order granting appeal. Filed Feb. 16, 1922, Charles J. Ohnhaus, Clerk. W. T. Alden, 134 S. La Salle St., Chicago, Ill. A. C. Campbell, Cheyenne, Wyoming, Attorneys for Complainant.

46 In the District Court of the United States for the District of Wyoming.

In Equity.

No. 1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

Assignment of Errors of Wyoming Railway Company, Complainant in the Above Cause.

And now, on this 16th day of February, A. D. 1922, comes the complainant, Wyoming Railway Company, a corporation, by its solicitors and counsel, William T. Alden and A. C. Campbell, and in connection with its petition for appeal, filed herein this day, and says that in the decree and order entered in the above entitled cause on the 21st day of January, 1922, manifest error intervened to its prejudice, and that said final decree and order is erroneous and unjust to the said complainant in the following particulars, to-wit:

1st. That the Court erred in overruling and denying the application of the complainant for a preliminary injunction, as prayed for in its bill of complaint.

2nd. That the Court erred in sustaining and granting the motion of the defendant, United States, to dismiss the bill of complaint.

3rd. That the Court erred in dismissing the complainant's bill of complaint and entering a judgment in favor of the defendant and against the complainant for costs of suit.

Wherefore, the complainant, Wyoming Railway Company, prays that the said order and decree be reversed, and that the said District Court be directed and instructed to issue the injunction prayed for in its bill of complaint, and that the said Court be further ordered, directed and instructed to enter its judgment and decree that
47 the order of the Interstate Commerce Commission, mentioned in said bill of complaint, made and entered on November 3, 1921, be annulled, suspended, set aside and held for naught, all as required by law.

W. T. ALDEN,
A. C. CAMPBELL,
Solicitors and Counsel for Wyoming Railway Company.

ALDEN, LATHAM & YOUNG,
Of Counsel.

Endorsements: No. 1235. United States District Court, District of Wyoming. Wyoming Railway Company vs. United States, Defendant. Interstate Commerce Commission, Intervenor. Assignment of Errors by Wyoming Railway Company. Filed Feb. 16, 1922, Charles J. Ohnhaus, Clerk. W. T. Alden, 134 S. La Salle St., Chicago, Ill., and A. C. Campbell, Cheyenne, Wyoming, Attorneys for Complainant.

48 Know all men by these presents that we, Wyoming Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wyoming, as Principal, and United States Fidelity & Guaranty Company, a corporation, as Surety, are held and firmly bound unto the United States and the Interstate Commerce Commission in the full and just sum of five hundred dollars ($500.00), to be paid to the said United States and Interstate Commerce Commission, their certain attorney or attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of February, One Thousand, Nine Hundred Twenty-two (1922).

Whereas, at a term of the District Court of the United States for the District of Wyoming, and on, to-wit: the 21st day of January, A. D. 1922, the same being one of the judicial days of the regular November, A. D. 1921, Term of the said court, and in a certain suit then and there pending in said court betwen the said Wyoming Railway Company as complainant, and the United States as defendant, and the Interstate Commerce Commission as intervenor, and known as cause No. 1235 in said court, an order and decree in said court were entered, denying the application of the complainant for a temporary injunction, as prayed for in its bill of complaint, and granting and sustaining the motion of the defendant, the United States, to dismiss the bill of complaint, and a judgment for costs was rendered against the said Wyoming Railway Company, and the Wyoming Railway Company presented to said court its petition for an appeal from said order, decree and judgment from the said court of the United States and having obtained from said court an order allowing an appeal to the Supreme Court of

49 the United States, and having filed a copy thereof in the Clerk's Office of the said court, to reverse the said order, decree and judgment in the aforesaid suit, and a citation directed to the said United States and Interstate Commerce Commission, citing and admonishing them to be and appear at a term of the Supreme Court of the United States to be holden at Washington, D. C. within thirty (30) days from the date thereof:

Now, the condition of the above obligation is such that if the said Wyoming Railway Company, a corporation, shall prosecute its appeal to effect, and answer all damages and costs if it fails to make this plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

WYOMING RAILWAY COMPANY,
By WILLIAM G. DOWS, *President.*

Attest:
[SEAL.] W. T. ALDEN,
Secretary.

UNITED STATES FIDELITY AND
GUARANTY COMPANY, [SEAL.]
By CHARLES M. DALEY,
Attorney in Fact.

Countersigned by
W. C. BOND & CO.,
General Agents for Wyoming.

Approved:
T. BLAKE KENNEDY,
Judge, District Court.

Endorsements: No. 1235. United States District Court for the District of Wyoming. In Equity. Wyoming Railway Company vs. United States. Appeal Bond of the Plaintiff on Appeal to Supreme Court of the United States. Filed Feb. 16, 1922. Charles J. Ohnhaus, Clerk. W. T. Alden, Chicago, Illinois, A. C. Campbell, Cheyenne, Wyoming, Attorneys for Plaintiffs.

50 In the District Court of the United States for the District of Wyoming.

In Equity.

No. 1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

On motion of Wyoming Railway Company, complainant herein, by William T. Alden, and A. C. Campbell, its solicitors, entered herein this 16th day of February, 1922, it is ordered that the appeal bond of said Wyoming Railway Company, with The United States Fidelity & Guaranty Company as surety, this day presented on its appeal from the decree and order of this Court of January 21, 1922, heretofore allowed, be and the same is hereby approved.

Enter.

T. BLAKE KENNEDY,
Judge of the District Court.

Endorsements: No. 1235. United States District Court, District of Wyoming. Wyoming Railway Company vs. United States, Defendant, Interstate Commerce Commission, Intervenor. Order Ap-

proving Appeal Bond. Filed Feb. 16, 1922. Charles J. Ohnhaus, Clerk. W. T. Alden, 134 S. La Salle St., Chicago, Ill., and A. C. Campbell, Cheyenne, Wyoming, Attorneys for Complainant.

51 In the District Court of the United States for the District of Wyoming.

Civil. #1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Citation.

To the United States, the Defendant, and to the Interstate Commerce Commission, Intervenor, Gretings:

You are here cited and admonished to be and appear in the Supreme Court of the United States at Washington, in the District of Columbia, sixty days from and after the day this Citation bears date, pursuant to an appeal allowed and filed in the office of the Clerk of the United States District Court, within and for the District of Wyoming, wherein Wyoming Railway Company is appellant, and you are appellees, to show cause, if any there be, why the Order dismissing the Bill of Complaint in said cause should not be corrected, and why speedy justice should not be done in its behalf.

Witness the Honorable T. Blake Kennedy, Judge of the United States District Court, for the District of Wyoming, this 21 day of February A. D. 1922.

T. BLAKE KENNEDY,
Judge.

Service of the above and foregoing Citation on Appeal is hereby accepted on behalf of the United States.

Dated February 21st, 1922.

ALBERT D. WALTON,
United States Attorney, District of Wyoming.

52 [Endorsed:] In the District Court of the United States for the District of Wyoming. Wyoming Railway Company, Complainant, vs. United States, Defendant. Civil #1235. Citation. Filed Feb. 21, 1922. Charles J. Ohnhaus, Clerk.

53 In the District Court of the United States for the District of Wyoming.

No. 1235. Civil.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

Be it remembered That on the 21st day of January, A. D. 1922, the same being one of the juridical days of the regular November, A. D. 1921 term of the District Court of the United States for the District of Wyoming, the above entitled cause came on for hearing before the Honorable Robert E. Lewis, U. S. Circuit Judge, the Honorable John A. Riner and the Honorable T. Blake Kennedy, U. S. District Judges, on the application of the complainant for a temporary injunction, the defendant's motion to dismiss the bill of complaint, and the answer filed by intervenor, the complainant appearing by W. T. Alden, and A. C. Campbell, Esquires, its attorneys, the defendant appearing by Albert D. Walton, Esquire, United States Attorney, and the intervenor appearing — Walter MacFarland, Esquire, its Attorney.

Thereupon counsel for all parties made oral argument to the court. Thereupon, and upon consideration thereof, the court delivered the following oral opinion:

The Court (by Judge Lewis): It appears from the bill of complaint in this case that the Pioneer Lumber Company and the Buffalo Lumber Company complained before the Interstate Commerce Commission against the Director General of Railroads, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Great Northern Railway Company, the Northern Pacific Railway Company, the Spokane,
54 Portland & Seattle Railway Company, and the Wyoming Railway Company, for violation of the first three sections of the Interstate Commerce Act. On hearing before the Commission it was found that there had been no violation of sections one and two, but that the practice of all of the defendants in putting in effect a rate of 81½¢ on lumber from Washington and Pacific Coast points to Ucross and Buffalo, and a rate of 72½¢ from points in the Spokane group to Ucross and Buffalo, was unduly prejudicial to the Pioneer Lumber Company, to the Buffalo Lumber Company, and to the two localities of Ucross and Buffalo.

That conclusion was arrived at on account of the blanket rates to Clearmont, Sheridan, Alliance, Edgemont, Deadwood, Spearfish, and other points being 25¢ lower than to Ucross and Buffalo, and that Ucross and Buffalo being in the same section or territory, this worked undue prejudice to the two complainants and to these locali-

ties, and on that the Commission made its order finding that these defendants, acting together, should put in a new rate to Buffalo and Ucross in order to remove that undue prejudice to these two localities and to the two complainants. The higher rates to Ucross and Buffalo were brought about by adding the complainant's local rate to the blanket rate at Clearmont, the junction point.

Now, the third section of the Interstate Commerce Act undoubtedly vests the Commission with power to take such action as may be necessary to remove undue prejudice to shippers and localities located in the same general section of the country. That appears to be a part of their duties and the purposes of establishing the Commission. Much has been said on the part of the complainant as to the present blanket rates, and that its share of those two rates, if they are to prevail, will be so small that the compensation to it will be confiscatory.

We are of the opinion that this court cannot assume that the present blanket rates will stand if, in the pro-rating, they will work confiscation of the complainant's property. Counsel for the
55 Government and counsel for the Commission have indicated several ways in which that may be avoided. If the present rates are to stand, that is, if the present blanket rates are to be applied to Buffalo and Ucross the carriers west of Billings may be required to contribute a part of their present share of those rates, and the Burlington may likewise be required to contribute a part of its share of those rates south of Billings, so as to make up to the complainant the necessary compensation for the haul from Clearmont to Ucross and Buffalo, in order that confiscation may be avoided. Again, the carriers may have the right to raise the blanket rates to the extent of equalizing them to the Ucross and Buffalo rates.

We all agree that in the present status of the proceeding this court is without power to take action, that the rights of the Wyoming Railway Company under the order of the Commission have not yet been determined, and it is impossible to know whether or not the action of the defendants in obeying the order of the Commission will result in confiscation. We understand that the Interstate Commerce Act empowers the Commission to adjust a proportionate division of a through rate between common carriers where they are unable themselves to agree upon it. For these reasons we are of opinion that the application for a temporary injunction should now be denied.

There is a motion on the part of the United States to dismiss; and while the Commission has answered it is, practically, a motion to dismiss also on its part, because it justifies, and does no more than justify, the action that it took in ordering the extension of the same rates to Buffalo and Ucross as to other towns in this general section of the country. We think the bill should be dismissed.

Mr. Alden: I think, if the Court please, that there should be in the record of this case, when it goes to the Supreme Court a certified copy of the record of the proceedings before the Interstate Commerce

Commission. I have a copy of the record here and of the exhibits.
I thought it was certified, but I find it was not. I did not
56 know that until I got on the train. I want that to go into the
record, on appeal. We have, I believe, thirty days to appeal. Of course, if the bill is dismissed that is a final order and disposes of the case, and there is no question about that being appealable. I believe under the statutes it is appealable for either side. Either side can appeal from the order either granting or denying the motion. If the court dismisses the bill there is no question about that. But I would like to have it understood that a certified copy of the evidence and the pleadings in the case of the Pioneer Lumber Company against the Director General of Railroads, No. 11608, shall be made a part of the record in the case on appeal. If counsel has any objection because it is not certified, we could have this copy certified and use it.

Mr. MacFarland: So far as we are concerned, while I could not agree to have it put in uncertified, we offer no objection to having it certified, if the court is willing to have that done. We are entirely willing to leave that to the court.

The Court (by Judge Riner): Any objection to having it certified and then filed as of today?

Mr. MacFarland: Not so far as we are concerned.

Mr. Walton: The United States has no objection.

The Court (by Judge Riner): I think the order should be, dismissed without prejudice, so that if you find that the rate is confiscatory you will have the right to bring an action again by filing a new bill. I think the order should be in that form. Is that satisfactory?

The Court (by Judge Lewis): Yes, that is satisfactory.

Mr. Alden: That is the order I would like to have, if it is agreeable to counsel, and it appears to be. We will perfect our appeal within thirty days.

The Court (by Judge Lewis): What should the bond be on error? Is $500 sufficient?

The Court (by Judge Riner): Yes.

57 The Court (by Judge Lewis): Make the bond $500 on error.

The Court (by Judge Riner): I think that record you seek to offer should be marked by the clerk or by the stenographer, to show that the record which you now offer is the one to be certified.

(Said record was thereupon marked by the reporter Plaintiff's Exhibit No. 1.)

Mr. MacFarland: Do your Honors care to have us prepare the order, that is, counsel agree on the form?

The Court (by Judge Riner): If it is in your favor you should prepare the order. Another thing, you will have to take exceptions if you want to take it to the Supreme Court. Do you want your exceptions noted, Mr. Alden?

Mr. Alden: Yes, I wish my exceptions noted to the order of the court. I want an exception to the court's denying the motion for a

restraining order, of course, an exception to the order of the court in sustaining the motion to dismiss the bill.

Mr. MacFarland: We could put that right in the order, so it would show up.

The Court (by Judge Lewis): Yes. You consult with the clerk about the form of the order and prepare it for the signatures of the three judges.

The above and foregoing, together with the oral arguments of counsel, constitutes a true and correct transcript of the entire proceedings had in said cause on said date.

And inasmuch as the matters hereinabove set forth do not fully appear of record in this cause, and to the end that the same may be and become a part of the record in this cause, the Wyoming Railway Company hereby tenders this, its Certificate of Evidence and exceptions to the rulings of the court made and entered during the
58 course of the said hearing, and prays that the same may be duly certified under the hand and seal of the Judges of this court, and thereby made a part of the record in this cause, and that the said Plaintiff's Exhibit No. 1, filed in this cause as of this date, be made a part of the record in this cause, and it is hereby certified accordingly this 16th day of February, A. D. 1922.

——— ———, [SEAL.]
U. S. Circuit Judge.

——— ———, [SEAL.]
T. BLAKE KENNEDY, [SEAL.]
Judges of the U. S. District Court.

Presented in open court this 16th day of February, A. D. 1922.

T. BLAKE KENNEDY,
Judge.

Endorsements: No. 1235. United States District Court, District of Wyoming. Wyoming Railway Co., vs. United States, Deft., Interstate Commerce Commission, Intervenor. Certificate of Evidence and Exceptions. Filed Feb. 16, 1922. Charles J. Ohnhaus, Clerk. W. T. Alden, 134 S. La Salle St., Chicago, Ill., and A. C. Campbell, Cheyenne, Wyoming, Attorneys for Complainant.

59 In the District Court of the United States for the District of Wyoming.

Civil. #1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Præcipe for Transcript.

To the Clerk of the above named Court:

Please prepare and certify, as the record on appeal in the cause above entitled, the following:

1. Bill of Complaint.
2. Notice.
3. Order setting hearing.
4. Motion to Dismiss.
5. Order allowing Intervention.
6. Appearance of Interstate Commerce Commission.
7. Answer of the Interstate Commerce Commission.
8. Order Dismissing the Bill of Complaint.
9. Petition for Appeal.
10. Order Granting the Appeal.
11. Assignment of Errors.
12. Bond.
13. Order Approving Bond.
14. Citation.
15. Certificate of Evidence.
16. Præcipe for Transcript.
17. Certified copy of the pleadings, evidence and exhibits Cause #11608 I. C. C.
18. Stipulation extending time to file record U. S. S. Court.
19. Order extending time to file record U. S. Supreme Court.

W. T. ALDEN,
A. C. CAMPBELL,
Attorneys for Appellant.

Endorsements: No. 1235, Civil. In the District Court of the United States for the District of Wyoming. Wyoming Railway Company, Complainant, vs. United States, Defendant. Civil #1235. Præcipe for Transcript. Filed Feb. 16th, 1922. Charles J. Ohnhaus, Clerk.

60 Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of complaint, filed July 7, 1920; answers of John Barton Payne, Director General of Railroads, as Agent, filed August 2, 1920, Chicago, Milwaukee & St. Paul Railway Company, filed August 4, 1920, Great Northern Railway Company and Northern Pacific Railway Company, filed August 9, 1920, Chicago, Burlington & Quincy Railroad Company, filed August 18, 1920, Wyoming Railway Company, filed September 13, 1920, and Joint Answer of Spokane, Portland & Seattle Railway Company and Oregon Trunk Railway, filed August 9, 1920; Transcript of Stenographer's notes of the hearing held September 16 and 17, 1920, at Spokane, Washington, before Examiner F. W. McM. Woodrow, and exhibits filed at this hearing as a part of the testimony; and report proposed by Examiner F. W. McM. Woodrow, filed May 7, 1921, in case No. 11608, Pioneer Lumber Company, and others, against John Barton Payne, Director General of Railroads, as Agent, Chicago, Burlington & Quincy Railroad Company, and others, the originals of which are now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 15th day of February, A. D., 1922.

[Seal of Interstate Commerce Commission. 1887.]

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

Plaintiff's Exhibit (1).
Filed January 21, 1922.
CHARLES J. OHNHAUS,
Clerk.

61 Copy.

Docket No. 11608.

Formal Complaint.

Filed Jul. 7, 1920. Interstate Commerce Commission.

Before the Interstate Commerce Commission.

Docket 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, and Chicago, Milwaukee & St. Paul Railway Company, Chicago, Burlington & Quincy Railroad Company, The Great Northern Railway Company, Northern Pacific Railway Company, Oregon Trunk Railway Company, Spokane, Portland & Seattle Railway Company, Wyoming Railway Company, Defendants.

The petition of the above named complainants respectfully shows:

I.

That they are corporations, incorporated under the State laws of Wyoming, engaged in the retail lumber and fuel business, and that their principal place of business is located in the city of Buffalo, state of Wyoming.

II.

That defendant, John Barton Payne, Director General of Railroads, as Agent, is an officer of the United States of America, designoted by the President thereof; pursuant to the provisions of Section 206 of the Transportation Act, 1920; that the railroads and systems of transportation over whose lines or routes the rates, charges and regulations complained of herein applied and which during Federal control were operated by the Director General of Railroads, are as follows: Chicago, Burlington & Quincy Railroad Company;
62 Chicago, Milwaukee & St. Paul Railway Company; The Great Northern Railway Company; Northern Pacific Railway Company; Oregon Trunk Railway Company and the Spokane, Portland & Seattle Railroad Company.

III.

That the defendants above named are common carriers engaged in the transportation of passengers and property, wholly by railroad, in

the United States and more particularly between points in the States of Washington, Idaho, Montana and Wyoming, and points outside of said states, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, as approved February 4, 1887, and acts amendatory thereof or supplementary thereto, and the Federal Control Act.

IV.

That complainants in the course of their business, caused to be shipped various cars of brick, lumber, shingles and posts to their yards at Buffalo and Ucross, Wyoming, more specifically shown in Exhibits "A," "B," "C," "D" and "E," which exhibits show routes, points of origin, points of destination, rates, tariff references and charges collected, all of which exhibits are made a part of this complaint.

V.

That on or about May 25, 1918, the Director General of Railroads issued his General Order No. 28, and thereby ordered all existing freight rates on all traffic carried by all railroad lines under
63 Federal control to be increased, effective June 25, 1918. An exhibit attached to the order indicated the extent of increases on the different commodities and the manner in which they were to be made. Pursuant to General Order No. 28, the defendants all published tariffs increasing their rates on the different commodities between points of origin and destination as more specifically shown in Exhibits "A," "B," "C," "D" and "E" attached hereto, and by reason of the method used in publishing rates, wherein they increased each separate factor of a combination rate, have exacted charges that are injust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, as amended.

VI.

That by reason of the manner in which the defendants complied with the Director General's Order No. 28, increasing each unit of a combination rate, instead of applying the increase to the through combination of rates, they have exacted charges that result in unjust discrimination in violation of Section 2 of the Act to Regulate Commerce, as amended.

VII.

Further, the rates published on lumber, shingles and posts in defendant's tariffs G. N. Ry. I. C. C. A-4858, N. P. Ry. I. C. C. 6833, R. H. Countiss (Agent) I. C. C. 1058 and Wyo. Ry. I. C. C. 31, are unduly preferential against and disadvantageous to complainants, in that defendants have refused to publish through rates to points on the Wyoming Railway Company, although it is the long estab-

lished practice on part of the defendants, other than the Wy-
64 oming Railway Company, to publish blanket rates on these commodities in the territory described in Paragraph III, which is undue preference in favor of complainant's competitors located on the Chicago, Burlington & Quincy Railroad Company, and which is in violation of Sections 1, 2 and 3 of the Act to Regulate Commerce, as amended, and the Federal Control Act.

VIII.

That by reason of the facts stated in paragraphs V, VI and VII, complainants have been and still are subjected to the payment of charges for transportation which, when exacted, are unjust, unreasonable and unjustly discriminatory, in violation of Sections 1, 2 and 3 of the Act to Regulate Commerce, as amended, also in violation of Section 10 of the Federal Control Act.

IX.

Wherefore, complainants pray that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants to publish just and reasonable through interstate rates for the future, and that each of them be ordered to pay to complainants by way of reparation for the unlawful charges hereinbefore alleged, the difference between the charges assessed as shown in Exhibits "A", "B", "C", "D" and "E" attached hereto, and charges based on rates found to be reasonable, also that they be ordered to pay to complainants reparation on all other shipments of the same commodities, that have moved or may
move between date of this complaint and date of final settle-
65 ment and that such other or further order or orders be made as the Commission may consider proper in the premises.

PIONEER LUMBER COMPANY,
BUFFALO LUMBER COMPANY,
(Signed) By R. S. BROWN,
Traffic Counsel.

Dated, Spokane, Washington,
May 15, 1920.

Address all future correspondence relating to this complaint to: R. S. Brown, 308 Columbia Bldg., Spokane, Washington.

Originally received, Date, May 20, 1920. Returned for correction, Date, June 4, 1920.

EXHIBIT "A."

Consignee, Pioneer Lumber Company.

Route, Chicago, Burlington & Quincy R. R. Co.—Wyoming Railway Co.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
C. of G.	4409	359	6-14-19	Sheridan, Wyo.....	Buffalo, Wyo.....	Brick	53025	17	90.13
						Flue Lin.....	1970	47½	9.36
Milw.	500667	5034	6-10-19	do.	do.	Com. Brick.....	52250	17	88.83
D. & H.	22350	445	4-17-19	do.	do.	Com. Brick.....	52250	17	88.83
S. S. W.	40177	903	10-29-19	do.	do.	Com. Brick.....	52250	17	88.82
						Fire Clay.....	500	47½	2.38
C., B. Q.	120001	56	10- 3-19	do.	do.	Com. Brick.....	52250	17	88.82

Authority: C., B. & Q. R. R. I. C. C. No. 10610.
Wyoming Ry. I. C. C. No. 31.

EXHIBIT "B."

Consignee, Pioneer Lumber Company.

Route, C., M. & St. P. R. R.—N. P. R. R.—C., B. & Q. R. R.—Wyo. Ry.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
Milw.	207291	M15	10-13-19	National, Wn.....	Buffalo, Wyo.....	Fir Lbr.....	79800	65	518.70

Authority: R. H. Countiss I. C. C. No. 1058—Wyo. Ry. I. C. C. No. 31.

N. P.	37448	M77	4-14-19	Eatonville, Wn.....	Ucross, Wyo.....	Fir Lbr.....	75600	54	408.24

Authority: R. H. Countiss I. C. C. No. 1008—Wyo. Ry. I. C. C. No. 31.

EXHIBIT "C."

Consignee, Pioneer Lumber Company.

Route, G. N. R. R.—C., B. & Q. R. R.—Wyo. Ry.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
G. N.	22574	F2	1- 1-19	Libby, Mont.....	Buffalo, Wyo.....	Pine Lbr.....	64140	58	372.01
Sou.	15576	F24	3-15-19	do.	do.	Pine & Larch.....	57980	58	336.26
—. —.	13976	F25	3-11-19	do.	do.	do.	90780	58	526.52
Milw.	85014	F50	2-25-19	do.	do.	do.	70845	58	410.90
N. P.	138401	F79	8-27-18	do.	do.	do.	69260	58	401.71

Authority: G. N. I. C. C. No. A-4006—Wyo. Ry. I. C. C. No. 31.

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Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
N. P.	27298	F98	10-30-19	Libby, Mont.....	Buffalo, Wyo.....	Pine Lbr.....	64620	58	374.80
I. C. L.	17213	F95	10-10-19	do.	do.	do.	54220	58	314.50
N. Y. C.	120525	92	9-19-19	Bonner's Ferry, I..	do.	Ced. posts.....	29220	58	168.48
P. M.	30359	F100	5-21-19	Priest River, I.....	do.	do.	35300	58	204.74
B. & M.	64444	F19	6- 2-19	Libby, Mont.....	do.	Lumber	50440	58	292.55
G. N.	220165	F39	6-11-19	Albany, Falls, I...	do.	Ced. Lbr.....	33420	68	227.26

Authority: G. N. I. C. C. No. A-4858—Wyo. Ry. I. C. C. No. 31.

EXHIBIT "D."

Consignee, Pioneer Lumber Company.

Route, N. P. R. R.—C., B. & Q. R. R.—Wyo. Ry.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
G. N.	10870	196	6-17-19	Clear Lake, Wn....	Buffalo, Wyo.....	Fir Lumber.....	68780	65	447.13
Sou.	36083	28	5- 5-19	Whites, Wn.....	do.	Shingles	30840	75	231.30
L. V.	80328	159	3-15-19	Enumclaw, Wn....	do.	Fir Lumber.....	56380	65	366.47
C. N. W.	102449	977	4-16-19	Tacoma, Wn.....	do.	do.	76450	65	496.97
Milw.	50594	152	11- 4-18	Montesano, Wn.....	do.	do.	45380	65	293.97
D. Q. E.	920	113	3-12-19	Enumclaw, Wn....	do.	do.	56300	65	365.95
G. H. S. A.	34506	352	10-31-18	Tacoma, Wn.....	do.	do.	63960	65	415.74
T. H. B.	3142	F34	8-20-18	Orting, Wn.....	Ucross, Wyo.....	do.	68900	54	372.06
H. V.	20612	156	8-13-18	Sumner, Wn.....	Buffalo, Wyo.....	do.	72400	65	470.60
A. V.	20190	B25	1-20-19	Tacoma,, Wn.....	do.	Shingles	25300	75	189.75
						Fir Lumber.....	14250	65	92.62

Authority: R. H. Countiss I. C. C. No. 1003—Wyo. Ry. I. C. C. No. 31.

P. R. R.	15862	57	6- 9-19	Kootenai, Ida.....	Ucross, Wyo.....	Cedar Post.....	37820	47	177.76
P. R. R.	285659	167	8-14-19	Standpoint, Ida....	Buffalo, Wyo.....	Cedar Lbr.....	49100	68	333.88
G. N.	37805	351	8-29-19	do.	do.	Pine & Lath.....	26515	58	153.79
						Cedar Lbr.....	32785	68	222.94
N. P.	71416	331	6-19-19	do.	do.	do.	42500	68	289.00
Erie	69562	54	6- 7-19	Kootenai, Ida.....	do.	Cedar Post.....	30140	58	174.81
P. & R.	4199	21	3-20-19	Heron, Mont.....	Ucross, Wyo.....	do.	37600	47	176.72
Q.	101128	15	3-20-19	do.	Buffalo, Wyo.....	do.	41300	58	239.54
Q.	105683	17	2-17-19	do.	do.	do.	41640	58	241.51

Authority: N. P. I. C. C. No. 6252—Wyo. Ry. I. C. C. No. 31.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
C. N. W.	55603	34	9- 6-19	Little Rock, Wn...	Buffalo, Wyo.....	Fir Lbr.....	94580	65	614.77
Authority: R. H. Countiss I. C. C. No. 1058—Wyo. Ry. I. C. C. No. 31.									
M., K. T.	63838	85	9-27-19	Kootenai, Ida.....	Buffalo, Wyo.....	Cedar Post.....	56060	58	325.15
Authority: N. P. I. C. C. No. 5833—Wyo. Ry. I. C. C. No. 31.									
Consignee, Buffalo Lumber Company.									
Route, N. P. R. R.—C., B. & Q. R. R.—Wyo. Ry. Co.									

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
B. 4	43306	46	4- 4-19	Alice Spur, I.....	Buffalo, Wyo.....	Cedar P-sts.....	38100	58	220.98
Authority: N. P. I. C. C. 6251—N. P. I. C. C. 6252—Wyo. Ry. I. C. C. 31.									
S. P.	85104	71	3-10-19	Standpoint, Ida....	Buffalo, Wyo.....	Cedar Lbr.....	49600	68	337.28
Authority: N. P. I. C. C. 6252—Wyo. Ry. I. C. C. 31.									
N. Y. C.	189375	28	5-30-19	Globe, Wash.....	Buffalo, Wyo.....	Shingles	24040	75	180.30
Mil.	500855	18	10-14-18	do.	do.	Fir Lumber.....	71720	65	466.18
Mil	210684	2	1- 6-19	do.	do.	Siding	6020	75	.....
						Fir Lumber.....	61270	65	443.47
B. & O.	75690	9	3- 9-20	do.	do.	Fir Lumber.....	61120	65	397.28
P. M.	53305	15	10- 7-19	do.	do.	Shingles	8550	75	.....
						Fir Lumber.....	49610	65	386.60
C. R. R. J.	12968	35	10-18-19	do.	do.	Shingles	29760	75	223.20
U. P.	72741	60	10-31-19	do.	do.	Fir Lumber.....	58720	65	381.68
G. N. W.	522295	14	2- 5-20	do.	do.	Fir Lumber.....	76900	65	499.85
Authority: R. H. Countiss I. C. C. No. 1003 and 1058—Wyo. Ry. I. C. C. No. 31.									

EXHIBIT "E."

Consigned, Pioneer Lumber Company.

Route, Oregon Trunk Ry. Co.—S. P. & S. R. R.—N. P. Ry.—C., B. & Q. R. R.

Car number.		Way-bill reference.		Origin.	Destination.	Commodity.	Weight.	Rate chgd.	Frt. paid.
C. N. J.	12539	L-161	12-10-18	Bend, Ore.....	Buffalo, Wyo.....	Pine Lbr.....	53560	59	316.00
B. A.	37381	K-112	11-11-18	do.	do.	do.	50180	65	326.17

Authority: N. P. I. C. C. 6252—Wyo. Ry. I. C. C. 31.

69 Filed Aug. 2, 1920. Interstate Commerce Commission. E. H.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 11608.

PIONEER LUMBER COMPANY et al.

v.

DIRECTOR GENERAL, as Agent; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al.

The Answer of John Barton Payne, Director General of Railroads, as Agent under the Transportation Act.

For answer to the complaint or so much thereof as he is advised it is necessary for him to answer this defendant says:

1. He avers that he is Agent under the Transportation Act, and as such is exercising the powers vested in and duties assigned him.

2. He admits that prior to his designation as Agent Walker D. Hines was Agent or Director General of Railroads, and as such exercised the powers vested in and the duties assigned him.

3. He refers to the tariffs named in the complaint and to all other tariffs applicable for a correct statement of the rates referred to or complained of herein.

4. He says that there was made the Director General's Order No. 28, effective June 25, 1918, and he avers that it was therein found by the Director General and certified to this Commission that in order to defray the expenses of Federal Control and operation,
70 fairly chargeable to railway operating expenses and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers operating as a unit, it was necessary to increase the railway operating revenue, also that in the Director General's opinion the public interest required a general advance in freight rates, passenger fares and baggage charges, as therein provided.

5. He denies that he as Agent or his predecessor, either as Agent or as Director General, has violated or is violating Section 1, 2 or 3 of the Act to Regulate Commerce, or Section 10 of the Federal Control Act, as alleged in the complaint, or that anything done or omitted by him, as Agent or his predecessor as Director General or as Agent, with respect to the subject matter of the said complaint, is in violation of law, or that he should be subjected to any averse order, and he denies that the complainant has been in any way damaged or is entitled to the relief prayed or to any other relief.

6. Each and every allegation in the complaint, touching anything alleged to have been done or omitted to be done by him as Agent or his predecessor as Director General or as Agent, not hereinbefore admitted or denied, is hereby specifically denied.

And having fully answered he prays that the complaint may be dismissed.

JOHN BARTON PAYNE,
Agent,

(S.) By JOHN F. FINERTY,
Assistant General Counsel,
U. S. Railroad Administration.

Washington, D. C., July 29, 1920.

71 Before the Interstate Commerce Commission.

Docket 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, Chicago, Burlington & Quincy Railroad Company et al., Defendants.

Answer of C., M. & St. P. Ry. Co.

Filed Aug. 4, 1920. Interstate Commerce Commission. E. H.

The separate answer of the defendant, Chicago, Milwaukee & St. Paul Railway Company, to the petition of complainant in the above entitled proceedings, respectfully shows:

I.

Answering paragraph I, this defendant admits the averments.

II.

Answering paragraph II, this defendant states that the allegations therein stated do not refer to this defendant and therefore it is not required, under the law, to answer same.

III.

Answering paragraph III, this defendant states that prior to December 28, 1917, and subsequent to March 1, 1920, it was a common carrier subject to the Act to Regulate Commerce.

72 IV.

Answering paragraph IV, this defendant has not knowledge or information sufficient to verify the averments thereof, and therefore, neither admits nor denies the same, but asks that strict proof thereof be required.

V.

Answering paragraph V, this defendant states that General Order No. 28 was promulgated by the Director General of Railroads and was put into force by his Agents, and it denies that said rates so published were in violation of law, as is alleged in said paragraph or in paragraph VI.

VI.

Answering paragraph VII, this defendant states that the tariffs lawfully on file with the Interstate Commerce Commission will show whether or not the facts alleged in said paragraph are true or otherwise.

Further answering said paragraph, this defendant denies that said rates as charged by it were in violation of the law, as is alleged in said paragraph.

VII.

Answering paragraph VIII, this defendant denies the allegations therein contained.

VIII.

73 Answering paragraph IX, this defendant denies that complainant is entitled to the prayer of its complaint as prayed, or otherwise.

IX.

Further answering, this defendant denies each and every allegation in said complaint contained not hereinbefore admitted, denied or otherwise answered unto.

Wherefore, having fully answered petition of complainant, this defendant prays that it be dismissed hence.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

(S.) By O. W. DYNES,
J. N. DAVIS,
Its Attorneys.

Dated at Chicago, Ill.,
August 2, 1920.

74 Before the Interstate Commerce Commission.

I. C. C. Docket No. 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, et al., Defendants.

Answer of Great Northern Railway Company.

Filed Aug. 9, 1920. Interstate Commerce Commission. E. H.

Defendant, Great Northern Railway Company, for answer to the complaint in this proceeding respectfully states:

1. Admits that it is a corporation engaged in business as a common carrier, as alleged in the complaint.

2. Refers to the tariffs covering the rates named in the complaint and to all other tariffs applicable for a correct statement of the rates referred to or complained of herein, and admits the said rates so far as the same appear in said tariffs.

3. Denies that it or any of the defendants herein named has violated or is violating any of the statutes or laws of the United States, or that anything done or omitted by it or any of them with respect to the subject matter of the said complaint is in violation of law; denies that any of the rates referred to in said complaint are unreasonable, prejudicial, discriminatory or unlawful, or that complainants have been charged or have paid any unreasonable, prejudicial, discriminatory or unlawful charges, and denies that it or any of the defendants should be subjected to any adverse order, and denies that the complainants are entitled to the relief prayed
75 for or any other relief.

4. Each and every allegation of the complaint not hereinbefore admitted is hereby specifically denied.

Wherefore, this defendant prays that the complaint in this proceeding be dismissed.

(S.) T. G. DORETY,
(S.) R. J. HAGMAN,
Attorneys for Defendant Great Northern Railway Company.

1120 Great Northern Building,
St. Paul, Minnesota.

76 Before the Interstate Commerce Commission.

Docket No. 11608.

PIONEER LUMBER COMPANY et al., Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, et al., Defendants.

Answer of Northern Pacific Railway Company.

Filed Aug. 9, 1920. Interstate Commerce Commission. E. H.

Now comes the Northern Pacific Railway Company, and for its answer to the complaint of the complainant herein, admits the allegations contained in paragraphs I, II, and III of said complaint, and denies the remaining averments thereof.

NORTHERN PACIFIC RAILWAY COMPANY,

(S.) By D. F. LYONS,
B. W. SCANDRETT,
Its Attorneys.

77 Before the Interstate Commerce Commission.

Docket No. 11608.

PIONEER LUMBER COMPANY et al.

v.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, and CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al.

Answer of Chicago, Burlington & Quincy Railroad Company.

Filed Aug. 18, 1920. Interstate Commerce Commission. E. H.

Now comes the Chicago, Burlington & Quincy Railroad Company, defendant herein, and for its separate answer respectfully shows:

I.

It admits that it is a common carrier, subject to the Act to Regulate Commerce, as amended.

II.

Defendant refers to the tariffs named in the complaint, and to all other tariffs naming rates which may be involved in the allegations

thereof, all of which are lawfully on file with the Interstate Commerce Commission, for a correct statement of the rates referred to or complained of in said complaint.

III.

Defendant denies that it has violated or is violating Sections 1 or 2 or 3 of the Act to Regulate Commerce or Section 10 of the Federal Control Act, or any Section thereof, as alleged in the said complaint, or that it has done or omitted to do anything
78 with respect to the subject matter of the said complaint which is in violation of law, and denies that the complainants are entitled to the reparation or relief prayed for, or to any reparation or relief whatsoever.

IV.

Except as herein admitted, or otherwise answered, defendant denies each and every allegation, matter and thing in the said complaint contained.

Wherefore, having fully answered the said complaint, defendant prays that the same may be dismissed as to it.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
(S.) By KENNETH F. BURGESS,
General Attorney.

I hereby certify that I have served copy of the above and foregoing answer upon complainants by depositing same in the United States mail, postage prepaid, addressed to Mr. R. S. Brown, 308 Columbia Building, Spokane, Wash.

(S.) By KENNETH F. BURGESS,
General Attorney.

Chicago, Ill.,
August 14, 1920.

79 Before the Interstate Commerce Commission.

Docket No. 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, and Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, The Great Northern Railway Company, Northern Pacific Railway Company, Oregon Trunk Railway Company, Spokane, Portland & Seattle Railroad Company, Wyoming Railway Company, Defendants.

Answer of Wyoming Railway Company.

Filed Sep 13, 1920. Interstate Commerce Commission. M. E. N.

Now comes the Wyoming Railway Company, defendant herein, and for its separate answer respectfully shows:

I.

It admits the allegations contained in paragraph I of the complaint.

II.

It admits the allegations contained in paragraph II of the complaint.

III.

It admits that it is a common carrier engaged in the transportation of passengers and property wholly by railroad in the United States; that it actually owns and operates only about 29
80 miles of road, extending from the town of Clearmont, Wyoming, on the Chicago, Burlington & Quincy Railroad, to the city of Buffalo, Wyoming, and it admits that as such common carrier it is subject to the provisions of the Act to Regulate Commerce.

IV.

That it has not knowledge nor information sufficient to verify the averments of paragraph IV of the complaint, and therefore neither admits nor denies the same, but asks that strict proof thereof be made.

V.

It admits that General Order No. 28 was promulgated by the Director General of Railroads, and that accordingly increased freight rates, as provided in such order, were published and enforced, but it denies that said rates so published were in violation of law and were and are unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce.

VI.

That it denies that it has exacted any charges that result in unjust discrimination in violation of Section 2 of the Act to Regulate Commerce.

VII.

That it states that the tariffs lawfully on file with the Interstate Commerce Commission will show whether or not the facts alleged in paragraph VII of the complaint are true or otherwise,
81 but denies that such tariffs are unduly preferential. It admits that there has been no through and joint rates published and established by the other defendants to points on the line of this defendant, and states that it has requested the Chicago, Burlington & Quincy Railroad Company, one of the defendants, to publish and establish such joint rates, and to agree with this defendant on a just, fair and proper division of such joint rates between it and this defendant, but this defendant denies that any rates charged by it have been in violation of law, and especially in violation of Sections 1, 2 and 3 of the Act to Regulate Commerce, as charged in said complaint.

VIII.

It denies the allegations contained in paragraph VIII of the complaint.

IX.

Further answering this defendant denies each and every allegation in said complaint contained, not hereinbefore admitted, denied, or otherwise answered unto, and specifically denies that the complainants, or either of them, are entitled to any reparation on shipments heretofore made, asked for in said petition.

Wherefore, having fully answered the complaint, this defendant prays that it be dismissed.

WYOMING RAILWAY COMPANY,
(Signed) By ALDEN, LATHAM & YOUNG,
Its Attorneys.

1104 Corn Ex. Bank Bldg.,
Chicago, Illinois.

Dated, Chicago, Ill., September 10, 1920.

82 We hereby certify that we have served a copy of the above and foregoing answer upon the complainants by depositing the same in the United States mail, postage prepard, addressed to Mr. R. S. Brown, 308 Columbia Building, Spokane, Washington, and have also mailed a copy to the attorneys for the other defendants, as follows:

John F. Finerty, Asst. Genl. Counsel, U. S. Railroad Administration, Hurley-Wright Bldg., Washington, D. C.

T. J. Dorety and R. J. Hagman, Attorneys for Great Northern Railway Co., 1120 Great Northern Bldg., St. Paul, Minn.

James B. Kerr and C. A. Hart, Attorneys for Spokane, Portland & Seattle Ry. Co., and Oregon Trunk Railway Co., 1410 Yeon Bldg., Portland, Oregon.

D. F. Lyons and B. W. Scandrett, Attorneys for Northern Pacific Railway Co., St. Paul, Minn.

O. W. Dynes and J. N. Davis, Attorneys for Chicago, Milwaukee & St. Paul Ry. Co., 1335 Railway Exchange Bldg., Chicago, Ill.

Kenneth F. Burgess, Genl. Atty., Chicago, Burlington & Quincy Railroad Co., 547 W. Jackson Blvd., Chicago, Ill.

on this 10th day of September, 1920.

(Signed) ALDEN, LATHAM & YOUNG.

1104 Corn Exchange Bank Bldg.,
Chicago, Illinois.

83 Before the Interstate Commerce Commission.

Docket 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, and Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, The Great Northern Railway Company, Northern Pacific Railway Company, Oregon Trunk Railway Company, Spokane, Portland & Seattle Railroad Company, Wyoming Railway Company, Defendants.

STATE OF ILLINOIS,
County of Cook, ss:

George G. Belt, being duly sworn, deposes and says that he is a resident of Cedar Rapids, Iowa, and is General Manager of the defendant the Wyoming Railway Company, a Wyoming corporation, which owns and operates a line of road connecting with the defendant the Chicago, Burlington & Quincy Railroad Company at the town of Clearmont and extending up Clear Creek Valley to the town of Buffalo, a distance of about twenty-nine miles; that the general

offices of the Wyoming Railway Company are at Cedar Rapids, Iowa; that the company also maintains an office at Buffalo, Wyoming, and that as General Manager about two-thirds of his time is de-
84 voted to the business of the company at Buffalo, Wyoming, and that the remaining portion of his time, or approximately one-third, he spends at Cedar Rapids.

Affiant further says that as General Manager of the Wyoming Railway Company, in the regular course of business, he would receive any and all communications that were received from the Interstate Commerce Commission in regard to any proceedings or suits that are pending before the Commission to which the Wyoming Railway Company is a party; that such mail would come to this affiant if received either at the office of the company in Cedar Rapids or Buffalo.

Affiant further says that one R. Stewart Knapp, 1100 F Street, N. W., Washington, D. C., is the authorized agent of the Wyoming Railway Company to accept service, file tariffs, etc., in all proceedings before the Interstate Commerce Commission, and was such agent on the 16th day of July, 1920, and since that time; that he has been advised that a copy of the complaint in the above cause was served upon said Knapp by the Commission on the 16th day of July, 1920, and, as this affiant is informed, said Knapp, within twenty-four hours after the receipt of same, mailed the complaint to the Wyoming Railway Company at Cedar Rapids, Iowa, but this affiant states that the same was never received by the Wyoming Railway Company at Cedar Rapids; that while this affiant was in Buffalo, Wyoming, a week or more on and after July 16, said complaint, if it had been received, would have been forwarded to this affiant at Buffalo, or submitted to Mr. Isaac B. Smith, the Treasurer of
85 the company. This affiant has made diligent inquiry of his office at Cedar Rapids, Iowa, and does not find that any such document was ever received, and that this affiant did not know of the existence of this proceeding before the Interstate Commerce Commission until on or about the 20th day of August, 1920, and that this affiant and other officers of the company learned of the existence of said proceeding through one of the other railroads which is a defendant to the proceeding.

Affiant therefore states that in his opinion the copy of the complaint mailed to the said Wyoming Railway Company about the 16th of July, 1920, must have been lost in the mails.

Affiant further says that as soon as the Wyoming Railway Company learned of the existence of said proceeding they at once secured a copy of the complaint from one of the other defendants and have since said time been thoroughly investigating and preparing for the defense of said proceeding.

This affiant is now informed and advised that the time for filing an answer on behalf of the Wyoming Railway Company to the petition expired on the 15th day of August. This affiant therefore asks on behalf of the Wyoming Railway Company that leave be given the said Railway Company to file herewith instanter its formal answer

to the said complaint, and that it be permitted to offer evidence before the examiner in support of its said answer.

(Signed) GEORGE G. BELT.

Subscribed and sworn to before me this 9th day of September, A. D. 1920.

(Signed) HERTHA EBERT,
[SEAL.] *Notary Public.*

85½ Before the Interstate Commerce Commission.

Docket No. 11608.

PIONEER LUMBER COMPANY, BUFFALO LUMBER COMPANY, Complainants,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent, and Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, The Great Northern Railway Company, Northern Pacific Railway Company, Oregon Trunk Railway Company, Spokane, Portland & Seattle Railroad Company, Wyoming Railway Company, Defendants.

Answer of Spokane, Portland and Seattle Railway Company and Oregon Trunk Railway.

Filed Aug. 9, 1920. Interstate Commerce Commission. E. H.

The Spokane, Portland and Seattle Railway Company and Oregon Trunk Railway answer the petition herein as follows:

The defendants exacted and collected for the shipments described in the petition the rates applicable under existing tariffs, and these defendants deny that under said tariffs complainants have been or are being subjected to the payment of any charges in violation of any section of the Act to Regulate Commerce.

Wherefore these defendants pray that the complaint herein may be dismissed.

(S.) JAMES B. KERR,
(S.) C. A. HART,
Attorneys for Defendants Spokane, Portland and Seattle Railway Company and Oregon Trunk Railway.

86 Before the Interstate Commerce Commission.

Docket No. 11608.

PIONEER LUMBER COMPANY et al., Complainants,

vs.

DIRECTOR GENERAL, as Agent; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., Defendants.

Spokane, Washington,
September 16, 1920—3.20 o'clock p. m.

Before F. W. McM. Woodrow, Examiner.

Met pursuant to notice.

Appearances:

J. B. Campbell and R. S. Brown, Realty Building, Spokane, Washington, appearing for Complainants.

R. J. Hagman, 1120 Great Northern Railway Building, St. Paul, Minnesota, appearing for all defendants except Wyoming Railway Company.

Burt Griggs, Buffalo, Wyoming, appearing for Wyoming Railway Company, Defendant.

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89 *Proceedings.*

Exam. Woodrow: We also have set for hearing today, Docket No. 11608, Pioneer Lumber Company, et al., versus Director General, as Agent, Chicago, Burlington & Quincy Railroad Company et al. Who appears for Complainants?

Mr. Campbell: The same appearances, Mr. Campbell and Mr. Brown.

Exam. Woodrow: And the Defendants?

Mr. Hagman: R. J. Hagman appears for all defendants except Defendant Wyoming Railway Company.

Mr. Griggs: Burt Griggs appearing for Wyoming Railway Company.

Exam. Woodrow: It is alleged that the rates charged since June 25, 1918, for the transportation of brick, lumber, shingles and posts from Sheridan, Wyoming, National and Eatonville, Washington, and Libby, Montana, to Buffalo and Ucross, Wyoming, which rates were constructed pursuant to the provisions of General Order No. 28 by increasing each factor of the combination rates in effect on this traffic theretofore, were and are unreasonable, unjustly discriminatory, unduly prejudicial to complainant and unduly preferential of complainant's competitors located on the Chicago, Burlington & Quincy Railroad, in violation of Sections 1, 2 and 3 of the Act to Regulate Commerce and Section 10 of the Federal Control Act.

The Commission is asked to prescribe just and reasonable
90 through interstate rates on this traffic for the future and to award reparation.

Does that set forth the issues, gentlemen?

Mr. Campbell: Yes.

Mr. Hagman: I think I may be able to save some time by asking Mr. Campbell a few questions about the issues. You are of course not asking this Commission to establish joint rates for the future on brick originating in Wyoming? That would be strictly intrastate movement.

Mr. Campbell: That is probably true as far as that fact is concerned—rates on strictly intrastate.

Exam. Woodrow: Just what is your position, sir?

Mr. Campbell: Well, for the future on traffic moving entirely intrastate we probably could not ask the Commission to establish those rates, but of course any establishments on rates of the interstate would probably create a discrimination unless the intrastate rates were adjusted at the same time. This being however an action against the Director General of Railroads, those rates as far as reparation is concerned, are in question.

Mr. Hagman: How could there be any discrimination between the interstate rates involving lumber and shingles and the intrastate rates involving brick?

Mr. Campbell: I understand this involves brick interstate as well.

Mr. Hagman: I don't so understand.

91 Mr. Brown: No, it does not.

Mr. Campbell: But the question of reparation, however, would be one that it is proper to consider—reparation on these movements during Federal Control. But the fixing of the rate for the future, I presume, could not be passed upon by this Commission at this time under the law, as I understand it.

Exam. Woodrow: Then your prayer is for rates for the future on all interstate traffic?

Mr. Campbell: Interstate traffic.

Exam. Woodrow: From the points involved in this complaint?

Mr. Campbell: Yes, sir.

Mr. Hagman: By all interstate traffic, you mean lumber, shingles and posts?

Mr. Campbell: Whatever is involved in this action, I have not checked it to know. If those are the only ones involved, that would be all there could be involved.

Exam. Woodrow: Would it take you long to check them up?

Mr. Brown: Brick is the only intrastate movement. They are all interstate except those brick shipments.

Exam. Woodrow: Then Mr. Hagman was right. The issues are for rates for the future on Brick, lumber and shingles.

Mr. Hagman: Not brick, Mr. Examiner. Brick is the intrastate.

Exam. Woodrow: On lumber and shingles.

Mr. Hagman: And posts.

92 Exam. Woodrow: Any other questions?

Mr. Hagman: No, sir.

Exam. Woodrow: You may proceed, Mr. Campbell.
Mr. Campbell: Call Mr. Brown.

R. S. BROWN was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Campbell:

Q. State your name and business for the record.
A. Mr. R. S. Brown, Traffic Manager, Western Retail Lumbermen's Association, Spokane, Washington.
Q. What has been your traffic experience?
A. I have been railroading sixteen years; and a year and a half in the traffic Department of the Association.
Q. Have you got a statement there of the cars and the amount involved in this matter?
A. They all appear on the complaint, statement attached to the complaint, as an exhibit, showing the cars involved.
Q. Now, then, if the Examiner wishes, I presume we had better call other witnesses and prove the payment.

By Mr. Campbell:

Q. That Exhibit shows, does it, the rates?
A. Shows rates, charges, the charges collected, yes, sir.
Q. We will follow this by showing who paid these charges, unless the Examiner wishes that testimony to go in now.

93 By Mr. Hagman:

Q. Well, Mr. Campbell, how do we know the amount paid?
Mr. Campbell: I understand the Exhibit shows the amount paid.
Mr. Hagman: I know, but the Exhibit shows there is discrimination too, but we are not going to take the complaint for it.
Mr. Campbell: That Exhibit shows the amount paid and the cars upon which it was paid.
Mr. Hagman: Yes, but you are going to have the expense bills?
Mr. Campbell: Oh, yes, we have expense bills.
The Witness: Yes, sir.
Mr. Campbell: We are not asking this to take the place of the expense bills. The Examiner, I understood, wanted the testimony as to the cars and the payment first.

By Exam. Woodrow:

Q. This exhibit shows the route of movement in each case, does it?
A. Yes, sir.

Exam. Woodrow: There appear to be so many shipments the Examiner will not request the Expense bills, but they can be furnished

in accordance with Rule 5 of the Rules of Practice. However, you can prove your right to receive reparation.

Mr. Campbell: We will do that by another witness.

94 By Mr. Campbell:

Q. Proceed, Mr. Brown.

A. There are two separate charges of unreasonableness here, one of them due to the method in which the carriers complied with Order 28 in combination rates, and the other one due to failure of carriers interested to establish through rates in blanket rate territory on lumber originating at Coast and Spokane points. Of those I will take up the combination rate first.

The 65th Congress enacted the Federal Control law, in which the President was empowered to take possession and assume control of any and all systems of transportation, and provide for the operation of such transportation systems while under Federal Control for the just compensation to their owners and for other purposes.

Section 10 of this Act provided that during the period of Federal Control the President may initiate rates, fares, charges, classification regulations and practices by filing claim with the Interstate Commerce Commission, but that such rates, fares and so forth, shall be just and reasonable.

The President issued his proclamation assuming control of each and every system of transportation located within the boundaries of the United States, and provided that possession during the operation of such transportation systems be exercised through William G. McAdoo.

This proclamation provided that orders, general or special, made by the Director General, shall have paramount authority and
95 be obeyed as such.

The Director General first issued Order 28 increasing freight rates, effective June 25, 1918. This order provided that lumber and articles taking lumber rates be increased 25 per cent, but not exceeding an increase of 5 cents per 100 pounds, and that brick be increased 2 cents per cwt.

This Order resulted in some confusion, carriers placing a different interpretation upon its terms. Consequently Edward Chambers, Director of Traffic, issued effective July 2, 1918, his Freight Rate Authority No. 10. I would like to file a copy of Freight Rate Authority 10 as Exhibit No. 1.

(Copy of Freight Rate Authority No. 10 was received in evidence, thereupon marked "Complainant's Exhibit No. 1, Witness Brown," and is forwarded herewith.)

The Witness: Freight Rate Authority No. 10 is dated July 2, 1918, and states that under date of June 8, 1918, carriers were instructed that where increases were made to combinations of rates, the increase should be made to through continuous movement, and not to each unit of the movement.

By Mr. Campbell:

Q. You may state whether or not this was done, or how these rates were made up.

A. Due to the failure on the part of the carriers to comply with instructions in Freight Rate Authority 10 each unit of the through rate, of the factors making up the through rate on the traffic,
96 as shown on the Exhibit attached to the complaint, was increased, resulting in an unreasonable increase. I would like to file a statement.

Exam. Woodrow: It will be received and designated as Complainants' Exhibit No. 2.

(The statement was received in evidence, thereupon marked "Complainants' Exhibit No. 2, Witness Brown," and is forwarded herewith.)

The Witness: This is a statement showing rates, revenue per ton mile, and percentage of increase since June 24, 1918. The points of origin here are points taken from actual movement, as shown on our bill of complaint.

The rate in effect on June 25, 1918, for example, from National, Washington to Buffalo, was 65 cents per 100 pounds. That rate is made up of two factors, 45 cents from National to Clearmont, and 20 cents from Clearmont to Buffalo.

The manner in which the carriers complied with Order 28 in this instance, resulted in an increase in rate of 16 per cent.

The revenue per ton mile from this particular shipment under a 65 cent rate was $.0102 per ton mile.

Now, the rate in effect on June 24th from this same point to Buffalo was 56 cents per 100 pounds. The factors of that rate were 40 and 16. The 40 cent rate was increased 5 cents per 100 pounds, and the 16 cent rate was increased 25 per cent, making a double increase to the rate in effect June 25th.

97 Exam. Woodrow: Is it your contention that the whole rate should have been increased 5 cents per 100 pounds?

A. Five cents, yes, sir. I have shown here for the Examiner's information, the rate in effect at the present time, due to the increase in Ex parte 74. That 81½ cent rate is made up of two factors: It would be 25 cents for the Wyoming Railway and 56½ cents to the transcontinental lines. In that instance we are asking for an establishment of the through rate, which I will take up later, of 56½ cents.

Q. Just at this point, what is the through rate you desire, or that you deem reasonable?

A. 56½ cents, applying from National to Buffalo.

Q. Applying from Buffalo to National, is that it?

A. No, from National, point of origination, 56½ cents. That is prior to the 28 Order.

Q. As the Examiner understands it, there was a rate prior to June 24th of 56 cents?

A. Yes.

Q. Now, notwithstanding the 25 per cent increase of the Director General and the increase in Ex parte 74, you request the Commission for a rate of 56½ cents as a reasonable rate, is that correct?

A. No, we are requesting a reasonable rate be established under the basis of rates in effect June 25th, plus the increase in Ex parte 74 of that reasonable rate.

98 Q. Now, could you state just what it is in cents, so that there will be no confusion?

A. That would be 61 cents.

By Mr. Campbell:

Q. Aren't you mistake in that, Mr. Brown? That is, upon this feature of the case, if the reparation should be that amount, you are asking for that rate; but for a future rate you are asking for a rate still lower than that, are you not?

A. Yes, for the future I am asking for the establishment of a rate that now applies to Clearmont, the junction, in other words, the blanket rate which applies to Clearmont, into Buffalo.

By Exam. Woodrow:

Q. You see the Examiner's difficulty, Mr. Brown.

A. I have another statement which will explain the blanket rates in effect. This deals just with the reparation that we are asking, due to the combination feature—Order 28.

Q. The Examiner would like for the record, your position as to the rate that you deem reasonable, and that you request the Commission to establish for the future.

A. The record will show that in another statement I have.

Q. You will pardon the Examiner, then, for interrupting. He will refrain and permit you to develop the matter in your own way.

A. I have a statement that will show that thing very clearly.

99 Mr. Hagman: To remove confusion in my mind, I would like to know what he meant by that 56½ cent rate he said he wanted.

Mr. Campbell: I think we can clear that up now. There are two requests we have: One is for reparation during the time of this movement under Federal Control. Now, the basis of reparation is the difference between what the rates were actually increased to and what they should have been increased to if our contention is right that they should have had but one increase instead of two. Then on the next feature of the case we ask for the establishment of a joint through rate. We ask that that joint through rate be the Clearmont rate, which is in blanket territory, and that is a lower rate than we are asking be used for reparation purposes. Is that right?

The Witness: Yes.

Mr. Hagman: But what is the 56½ cent figure referred to?

A. That represents the rate in effect from National to Clearmont,

the junction point on August 25th, prior to the increase in Ex parte 74.

Q. That is not a joint through rate from National to Buffalo?

A. Not by any means. We are asking for the establishment of the Clearmont rate to Buffalo.

By Exam. Woodrow:

Q. You mean on June 25th?

A. No, 45 cents. I am asking the rate to Clearmont, Wyoming, that is the junction point. Probably if I follow the map you will understand a little more clearly the situation. So I will put
100 this in as an exhibit now.

Mr. Campbell: That will be Exhibit No. 3.

(The statement was received in evidence, thereupon marked "Complainants' Exhibit No. 3, Witness Brown," and is forwarded herewith.)

The Witness: I have shown here, Mr. Examiner, on this statement, a rate in effect on June 25th of 65 cents on fir lumber from National, Washington, to Buffalo, Wyoming. This is the top item in the statement. That rate is made up of two factors, a through rate carried in Transcontinental Tariff 1003, I believe is the number, to Clearmont, Wyoming, the junction point—Clearmont on the C. B. & Q. —and from Clearmont to Buffalo, the rate in effect at that time was 20 cents. Those are the two factors making the 65 cent rate.

Now, to Ucross, the top shipment on the statement, from Eatonville, Washington, car of fir lumber, the rate in effect on June 25th as the result of Order 28, 54 cents. That is made up of two factors: 45 cents from Eatonville to Clearmont and 9 cents from Clearmont to Ucross.

It will be noticed that the revenue in one instance per ton mile is a fraction over a cent; to Ucross it is $.087, while during 1918 the Statistics of Common Carriers, as compiled by the Interstate Commerce Commission on all revenue freight showed the Burlington as earning $.00738; the Milwaukee $.00840; the Great North-
101 ern $.00870 and the Northern Pacific $.00819 per ton mile.

By Exam. Woodrow:

Q. What is that average?

A. Average revenue per ton mile shown by the Bureau of Railway Statistics——

Q. Well, do you lay much stress on those figures? Do you think they can prove your case?

A. No, I think this will show a reasonable comparison—show by comparison that these rates were unreasonable on traffic moving at the same time.

Q. Do you know any reason why lumber and these commodities should not bear more than the average cost?

A. Lumber is considered a low-grade of traffic. The risk of transportation is not great, and I do not think it is reasonable to earn average revenue.

By Mr. Campbell:

Q. And where the Commission has fixed the rate on lumber they have fixed it lower than other commodities taking the same general class, have they not?

A. Yes, sir. That is all I have to say on the combination rate feature of the complaint.

Mr. Hagman: Right there, if that is all you have to say, I would like to know what you want, what you are asking for.

Mr. Campbell: That will appear as the testimony goes on.

Mr. Hagman: I understand the reparation, what you want to reparation, but I am speaking of the future.

102 The Witness: I will explain when I get into it.

Mr. Campbell: I would like to modify a little the statement made there. I think if reparation is granted, and the Commission should find that 56½ cents is a reasonable rate for the future, I think reparation ought to be to that amount; but if and only in case that they do not find that that is the reasonable rate for the future, that the reparation should be confined to the difference between the one advance and the two advances, and that is the contention which we make here. If they should find that the rate for the future should be 56½ cents, then reparation should be for the difference between what was paid and 56½ cents; but if they should find that the rate for the future should not be that, then the measure of reparation should be the difference between the increase in the two factors or the one.

By Exam. Woodrow:

Q. Gentleman, the Examiner does not understand this, and he is going to ask a few questions. From your Exhibit 2, or in your exhibit, you show that the rate from National, Washington, to Buffalo, prior to June 25, 1918, was 56 cents?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Then there was an increase in pursuance with General Order No. 28; one factor was increased from 40 cents to 45 cents,

103 or an increase of 5 cents, and the other factor was increased how much?

A. From 16 to 20, an increase of 4 cents.

Mr. Campbell: 25 per cent.

By Exam. Woodrow:

Q. An increase of 4 cents, making the rate 65 cents?

A. Yes, sir.

Q. Now, in pursuance of Ex parte 74 the present rate is 81½ cents?

A. Yes, sir.

Q. Notwithstanding the fact that the present rate is 81½ cents is it your position that the reasonable rate for this movement should be 56½ cents?

A. Yes, sir.

Q. And that is the rate from National, Washington, to Buffalo, Wyoming that you desire the Commission to establish for the future?

A. That is the rate from National to Clearmont, Wyoming, the junction point with the Burlington. We ask that the rate be established to Buffalo.

Q. Leave Clearmont out of it. You desire the rate from National, Washington, to Buffalo, Wyoming, to be 56½ cents, which you claim should be the reasonable rate to Clearmont, Wyoming—put it that way.

A. Which is the present rate to Clearmont and which we
104 claim would be a reasonable rate to Buffalo,—the extension of that rate through to Buffalo.

Mr. Hagman: Under Ex parte 74, Mr. Examiner, the rate from Clearmont has been increased to 56½ cents, and they wish to have that rate to Clearmont made the rate to Buffalo.

By Exam. Woodrow:

Q. This exhibit does not show that, and that is what the Examiner wanted to bring out.

A. I have another exhibit that does show that. I am just confining this exhibit to the combination feature, showing the increase that resulted from the Order 28 due to the increase of both factors of the rate in effect prior to June 24, then the increase due to Ex parte 74, and that is all this statement is intended to show.

Mr. Campbell: The testimony will clear it up as we go along.

The Witness: My other statement will clearly show you what we are after.

Exam. Woodrow: The Examiner will refrain from asking questions, then, and he apologizes for the interruption.

Mr. Campbell: We have no objection, Mr. Examiner.

Exam. Woodrow: Proceed.

The Witness (Mr. Brown): By referring to the blueprint, we have shown the transcontinental carriers, the Great Northern and Northern Pacific operating say from Seattle to Laurel and Billings, Billings being the gateway in connection with the C. B. & Q. and Northern Pacific, and Laurel the Great Northern gateway.

105 For a long period of time it has been the practice of carriers in this vicinity to blanket rates on lumber. They have applied the blanket scale of rates to various branch line points. As shown by the map they apply at Spearfish and Deadwood, on a branch of the C. B. & Q., at the present time the same rate as applies to Clearmont, Wyoming, and down on the other branch of the

Burlington as far as Birds, Colorado, a point on the Great Western Railroad, they also apply the same rate as applies to Clearmont.

By Mr. Campbell:

Q. Now how many lines, Mr. Brown, does the traffic move over to reach Deadwood and Spearfish?

A. Well, those are terminal points on the Spearfish and Deadwood branch of the C. B. & Q., and it would move over the Great Northern or the C. B. & Q. or Northern Pacific and C. B. & Q. To get to Birds you must move over these same lines also, over the Northern Pacific or Great Northern and the Burlington, Colorado & Southern and the Great Western, or four railroads. As I said before, it is common practice to blanket rates and extend them onto small lines.

In this blanket rate territory, for instance, groups A, B and C rates from Coast points apply to points on the Colorado & Southern, a switching road of 20 miles total trackage. The rates also apply to Casper, Wyoming, via the northern route, the Northern Pacific or Great Northern through the junctions shown on the map, via
106 the C. B. & Q. direct, or via the C. B. & Q., Powder River and the C. & N. W.

Q. Casper is not shown on that map?
A. No, it is not shown?
Q. Where is that?
A. It is directly south of Buffalo.
Q. Directly south of Buffalo?
A. Yes.
Q. On what line?
A. On either the C. B. & Q. or the North Western.

By Exam. Woodrow:

Q. How many miles south of Buffalo is Casper?
A. I think it is 60 or 70 miles.

Mr. Hagman: 135.
The Witness: You meant in rough line?
Exam. Woodrow: Well, the map will show that?
A. Yes, sir. I wish to file at this time this Exhibit.

(The statement was thereupon received in evidence, marked "Complainants' Exhibit No. 4, Witness Brown," and is forwarded herewith.)

The Witness: This is a statement showing rates to Buffalo, Wyoming, from representative points of origin, compared with rates to other destinations in blanket rate territory.

By Mr. Campbell:

Q. Does this exhibit show for itself, or have you any explanation of it?

107 A. Well, it shows for itself, although I would like to explain the revenue per ton mile.

Q. Yes, explain anything you deem necessary.

A. For instance, I will deal with the rates in effect June 25th to Buffalo: the rate in effect June 25th was 65 cents from National, Washington, on fir lumber, and that returned a revenue of a fraction over 1 cent per ton mile. The distance from National to Buffalo is 1,270 miles.

At the same time carriers had in effect a rate of 45 cents on fir lumber from National to Spearfish, South Dakota. That returned them a revenue of $.0057 per ton mile. In order to take that traffic from National to Spearfish it was necessary to haul through Clearmont, a 45 cent rate applying also at Clearmont at that time.

By Exam. Woodrow:

Q. Do you allege violation of the Fourth Section?

A. No, sir.

By Mr. Campbell:

Q. Right there, though, you do allege violation of Section 2, the service up to Clearmont being contemporaneous, is it not?

A. Yes.

Mr. Campbell: Allegation of violation of Section 2 is not necessary because it is not over the same route to Buffalo, so far as Buffalo is concerned.

The Witness: Carriers extended the rate of 45 cents to
108 Birds, Colorado, a distance of 1676 miles from National. That Birds rate is extended over at Loveland, over the Great Western Railway, a short line.

I call the Examiner's attention to the important statement of average per ton mile earnings shown in Common Carriers Statistics Report for 1918, for comparison with the earnings shown there.

I would like to offer at this time, statement showing rates and ton mile revenue accuring to the Wyoming Railway Company and transcontinental carriers on lumber from representative points.

Exam. Woodrow: It will be received.

(The statement was reecived in evidence, thereupon marked "Complainants' Exhibit No. 5, Witness Brown," and is forwarded herewith.)

The Witness: The purpose of this statement is simply ton mile revenue which accrues to the transcontinental carriers up to Clearmont, and the ton mile revenue accruing to the Wyoming Railway Company under rates in effect on June 24th, June 25th and present rate.

By Mr. Campbell:

Q. That shows for itself?

A. Yes, sir.

Q. Exhibit 6.
A. Exhibit 6 is a statement showing revenue per ton mile accruing to the carriers if through rates were established to
109 Buffalo, Wyoming, compared with revenue accruing from rates to Birds, Colorado, which are already established through rates.

By Exam. Woodrow:

Q. Just a minute. If through rates should be established to Buffalo the same as to Clearmont?
A. That is it, that is our contention.
Q. In other words, Exhibit 6 shows the rates from points of origin to Clearmont, and it is complainant's contention that those rates ought to be applicable to Buffalo, is that your contention?
A. That is the contention, yes, sir.

(The statement was received in evidence, thereupon marked "Complainants' Exhibit No. 6, Witness Brown," and is forwarded herewith.)

The Witness: The rate in effect June 25th from National—just a minute. That statement should show Clearmont instead of Buffalo, Wyoming.

By Mr. Campbell:

Q. Well, if this rate was extended to Buffalo it would show—your exhibit shows per ton mile earnings——
A. If they were, yes, that is the idea. I will deal with the rate on June 25th first. If the rate had been extended to Buffalo it would have been 45 cents, or in other words, the Clearmont rate applied to Buffalo. This is a distance of 1,270 miles, with ton
110 mile earning of $.007. At the same time carriers had in effect a 45 cent rate from National to Birds, Colorado, a distance of 1,676 miles, which returned them a ton mile earning of $.0053.

By Exam. Woodrow:

Q. You are speaking now of the rate from National to Clearmont?
A. If it was extended to Buffalo—if through rates were established to Buffalo, that would be the ton mile earning.

By Mr. Campbell:

Q. The mileage shown is the mileage to Buffalo?
A. Yes, sir.

Mr. Campbell: I offer Exhibit 7.
Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked, "Complainants' Exhibit No. 7, Witness Brown," and is forwarded herewith.)

The Witness: This is a comparative statement of car mile earnings. I have shown here the rates from four different points on four different grades of forest products.

Proposed rate, that is, the rate we propose would be the reasonable rate, to Buffalo, Wyoming, 56½ cents.

Also I have shown the present rate there. Under the present rate the car mile earnings would be 46.06 cents; under proposed rate, 31.93 cents. Now to get those car mile earnings, I have used, as shown there, on fir lumber, 63,760 pounds; on cedar lumber, 46,980 pounds, and on shingles, 34,666.

111 Those bases of the average car loading were the bases that were submitted to the Commission in Ex parte 74 by the West Coast Lumbermen's Association, Seattle. The basis for pine is my own estimate. I could not get any authentic average loading for pine.

At the same time from Everett, for instance, to Clearmont, Wyoming, a distance of 1099 miles, the rate is 56½ cents, and that returns a car mile earning of $32.77, or in other words it is 84 cents per car mile earnings less than to Clearmont. To Birds, Colorado, at the same time they carried 56½ cent rate, 1,679 miles, and their return per car mile is $21.45. That is $10.48 per car mile earning less than our proposed rate to Buffalo would return to the carrier, and $24.61 per car mile earning less than under the present rate to Buffalo.

By Mr. Hagman:

Q. Let me ask you there whether you mean per car mile or per car?

A. Per car.

Q. Your heading says "per mile."

A. Per car earning.

Mr. Campbell: I do not see how that could be—you have that per car mile—unless that is 32 cents instead of dollars.

By Exam. Woodrow:

Q. Have you decided what it is, sir?

A. Per car mile.

Mr. Campbell: And it will be 32 cents instead of 32 dollars.

Exam. Woodrow: Those are cents, in Exhibit No. 7, in-

112 stead of dollars.

Mr. Campbell: Must be.

The Witness: Yes. That is all the exhibits I have to explain the rate situation.

I would like to offer in evidence reference to this Pine Plume Lumber Company decision, with the permission of the Examiner.

By Mr. Campbell:

Q. Make the reference, as you did in the other case.

A. In Docket No. 10933, Pine Plume Lumber Company, versus Director General, Atlantic Coast Line Railroad and others. I call the Examiner's attention to proposed report of Attorney-Examiner M. A. Pattison, where similar question of combination rates was under consideration.

Mr. Hagman: Is this argument or evidence?

Mr. Campbell: It is evidence.

Exam. Woodrow: It is in; it doesn't make any difference what it is.

By Mr. Campbell:

Q. Is that all the exhibits you have?

A. Yes, sir.

Q. Now, Mr. Brown, will you explain the blanket territory in which Buffalo is situated, or is that a blanket territory, known as blanket territory, in which Buffalo is situated?

A. It is.

113 Q. Are there any points in and about Buffalo on branch lines that do not have joint rates in the Clearmont list that you know of?

A. Not that I know of. All lines in the vicinity of Buffalo, points on the C. B. & Q., they all enjoy the blanket rate.

Q. The movement to Spearfish and Deadwood is over at least two lines, while to Birds it would require at least four lines to move over, and at Buffalo it could move over but two lines?

A. That is it—well, depending on where it originated. To Buffalo it would be three lines, Northern Pacific, C. B. & Q. and any other line.

Q. It would have to originate on the Great Northern some place in order to be three lines?

A. Yes.

Q. Anything else that you have to state?

Exam. Woodrow: Does the Examiner understand, then, that shipments destined to Clearmont, Spearfish, Deadwood and Edgemont, from points of origin take the same rate?

Mr. Campbell: Take the Clearmont rate. They do now.

The Witness: As applied to Clearmont, yes, sir.

By Exam. Woodrow:

Q. From the points of origin involved in this case?

A. From the points of origin, yes, sir.

Q. And that Buffalo takes a higher rate because Buffalo is on an independent line?

114 A. I might state at this time that the independent line has requested of the Burlington that they establish through rates.

By Mr. Campbell:

Q. That is shown by their answer?
A. That is shown by their answer to our complaint,—which has been denied.

By Exam. Woodrow:

Q. Then that is the issue in this case entirely?
A. That is the issue, yes, sir.
Q. To have the Clearmont rate established to Buffalo and to Ucross, is it?
A. Ucross, yes, sir, that is an intermediate point. That is the same rate that applies to Colorado, to Birds, Colorado, on a short line railroad, the Great Western Railway—a distance of 1,679 miles from Everett, for instance.
Q. Well, Birds does not take the same rate as Clearmont?
A. Yes, sir.
Q. Well, do Wendover and Loveland take the same rate as Birds and Clearmont?
A. Yes, sir.
Q. From all the points of origin involved in this complaint?
A. Yes, sir, as shown by the Exhibit.

Exam. Woodrow: You may proceed.

By Mr. Campbell:

Q. Have you anything else, Mr. Brown?
A. I think not.

115 Cross-examination.

By Mr. Hagman:

Q. Mr. Brown, you testified as to General Order No. 28 and Freight Rate Authority No. 10. Did you mention the date that the tariff provided for the single increase, or the tariff that provided for a single increase?
A. Not in connection with the Wyoming railroad, no, sir. There was no provision in any tariff until Morris' Tariff was issued.
Q. This case, then, differs from the one we had this morning in that the tariff never did provide for a single increase, even after your shipments moved?
A. No, sir, never did provide, that is, the tariffs never did. As far as concerns Morris' Tariff No. 228 is concerned, that applied to the transcontinental rate up to Clearmont. Of course that combination clause was not effective in connection with non-Federal Controlled carriers. That did not amend their local tariffs so as to become a party of record to the Morris' tariff.
Q. Are you going on the theory that the Wyoming Railway was under Federal Control or not under Federal Control?

A. The Wyoming Railway was under Federal Control at the time that all carriers were taken under Federal Control. At the time they took advantage of the 28 Order and increased their tariff, June 25th, 1918, they were under Federal Control, and they were relinquished from Federal Control June 29, 1918.

Q. Then you are basing your statement on the assumption
116 that they were not under Federal Control when your shipments moved, is that right?

A. No, it don't make any difference whether they were or not. My statements are based on rates that resulted.

Q. It seems to me it would make all the difference in the world.

A. I do not quite see how it would.

Q. If they were not under Federal Control you surely do not argue that General Order 28 applied to them?

Mr. Campbell: That is a matter of argument.

By Mr. Hagman:

Q. I am trying to get at how he bases his complaint, that is all.

A. The basis of my complaint is the unreasonableness of the rate that resulted from the double increase in the combination rates; also the establishment of through rates for the future.

Q. You are making the contention, as I understand, that General Order 28 itself called for only a single increase, is that right?

A. No, my statement I think was that Freight Rate Authority No. 10 was an interpretation of the Order 28, General Order No. 28, and in that Freight Rate Authority 10 a statement was made by Edward Chambers that the increase should be made to through continuous movement.

Mr. Campbell: And further we will argue that that General Order 28 contemplated but one increase, as is shown by the inter-
116½ pretation of that order in Freight Rate Authority No. 10.

By Mr. Hagman:

Q. That double increase in dollars and cents amounts to five cents here, doesn't it?

A. Four cents to Buffalo, and two to Ucross.

Exam. Woodrow: That is four cents in excess of what it would have been if there had only been a through movement and one increase?

Mr. Campbell: One increase of four cents, and by increasing it twice they made an extra four cents.

The Witness: One increase was five cents, the maximum. We contend one increase should apply to through movement. That is a maximum of five cents.

By Exam. Woodrow:

Q. As the Examiner understands you, there was a 9 cent increase?

A. That is it, five and four.

Q. Therefore, if there had been one increase, it would have been a maximum of five cents, and that the damage here is by the double increase?

A. That is it, that is, to Buffalo; to Ucross the two cents is the damage.

Q. That is the basis on which you desire reparation?

A. No.

Mr. Campbell: No, we desire reparation to 56½ cents providing the Commission finds that 56½ cents is the rate for the fu-
117 ture; but if they fail to find 56½ cents is the rate for the future, then we claim that is the basis for reparation in this movement.

Exam. Woodrow: Then you want to amend your complaint to that extent?

Mr. Campbell: No, we do not.

Mr. Hagman: I was going to make that point, Mr. Examiner, but I do not think the issues are broad enough. They complain simply of that interpretation of General Order No. 28.

Mr. Campbell: But that was filed prior to Exparte 74.

Mr. Hagman: Exparte No. 74 has nothing to do with the reparation.

Mr. Campbell: Yes it had to do with the measure now of the present rate and the rate for the future.

Mr. Hagman: It has to do with the rate for the future, but you want reparation on your complaint solely on the ground of the double increase. That is the way I understand the issues.

Exam. Woodrow: The Examiner understood the issue to be that you were satisfied with the rates charged, to the extent that they included only a single increase, and if they had included a single increase, then you would not have brought this complaint?

The Witness: No, sir, that is part of the complaint. Then we go on and say we ask the establishment of a through rate because of the unreasonable rates carried in tariffs named in the complaint.
117½ Exam. Woodrow: You desire the establishment of a reasonable rate for the future on the basis of the Clearmont rate, but you are limiting your request for reparation to the rate that would be reasonable in your opinion, if a single increase had been applied.

Mr. Campbell: I think that is right under the complaint. I am looking over these——

The Witness: It would have been all right if it had not been for Exparte 74 increasing the rates. I don't know whether the—if the Clearmont rate is established to Buffalo, wouldn't that be the basis for reparation?

Mr. Campbell: I think so. How that was brought out was this: this increase now by Exparte 74 increases it beyond the point of where reparation was asked for before, and in view of Exparte 74 I think the prayer perhaps should be amended, asking that reparation be granted to the extent found reasonable for the future, and if no rate is found reasonable for the future, then the difference should be as alleged now in the prayer, prayed for.

Mr. Hagman: I understood from the complaint, Mr. Examiner, that the issue as to reparation was this: they are asking reparation on basis of a single increase instead of a double increase, and that is all. Now, Exparte 74 cannot possibly enter into the reparation question.

118 Exam. Woodrow: That was the Examiner's understanding, as stated by the previous question. The Examiner would like to have it cleared up to show just what the complainant wants.

Mr. Campbell: I think that is technically true, as the complaint is drawn, but as has been explained, on account of Ex parte No. 74, it increases the rate. If it had not been for Ex parte 74 the increase in this rate to 56½ cents would have remained then, and just the difference on the reparation will be less than it would have been before Ex parte 74, because the rate is now greater.

Exam. Woodrow: You speak about the rate now as the Clearmont rate?

Mr. Campbell: Yes. That is the rate that we ask to be established for the future. Now, if that rate is established for the future, reparation should be the difference between that rate established for the future and the rate actually paid; but if that rate is not established for the future, then reparation should be paid only on the difference between the two increases. Isn't that right?

The Witness: That is right.

Mr. Hagman: In other words, you paid 58 cents from Spokane to Buffalo when these shipments actually moved?

Mr. Campbell: Yes.

Mr. Hagman: 38 to Clearmont and 20 cents beyond. And

119 now, you are saying that 56½ cents is a reasonable rate.

Mr. Campbell: Is a reasonable rate.

Mr. Hagman: Is a reasonable rate. And if the Commission finds that to be correct, you are asking for the difference between 58 cents and 56½ cents, instead of the double increase, the difference made by the double increase, is that correct?

Mr. Campbell: No, I think on these actual movements the difference would be in the increase, but for other movements it would be the two cents, but for these actual movements the difference would be between the double increase and the single increase, because this moved during Government Control. Any movement since Government control that would be true.

Exam. Woodrow: Does the Examiner understand, then, that the rates from point of origin to Buffalo, if there had been applied a single increase in accordance with complainant's contention, would have been lower than the present rates to Clearmont that you desire established for the future?

Mr. Campbell: Yes. But on this movement during Government control the measure of the reparation there is the difference between the increase; but since Government Control the measure then would be the difference between the rate to Buffalo and the 56½ cents which would be established for the future. Then that clears it up.

Exam. Woodrow: And there is no inconsistency in the
120 complaint?

Mr. Campbell: It does not seem so to me.

Exam. Woodrow: You may proceed with your cross examination.

Mr. Hagman: I don't think we ought to leave this before we clear it up. If Mr. Campbell will point out my error, I will be glad to understand this thing. Take the shipment from Spokane; you will agree with me that the rate up to Clearmont is 38 cents?

Mr. Campbell: I don't know what the rate was.

Mr. Hagman: Your rate man here will know.

Mr. Campbell: Take the National rate, rate from National, Washington.

Mr. Hagman: Let me take mine. I have got this all figured out. Mr. Brown, you can tell us whether 38 cents is correct?

A. You say from Spokane to Buffalo?

Q. No, to Clearmont.

A. 38 cents.

Q. Yes. Then it is 20 cents from Clearmont to Buffalo?

A. Yes, sir.

Q. Making the rate 58 cents at the time these shipments moved, after General Order No. 28?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

Q. All right. Now, then, you are asking for the Clearmont rate to be extended to Buffalo, are you not?

121 A. Yes, sir.

Q. In other words, you are asking for 38 cents to Buffalo?

A. Yes, sir.

Q. Now, if you are asking for reparation on basis of future rate of 38 cents, you are going to get 20 cents reparation; if you are asking reparation on basis of the double increase, or a single increase you are going to get four cents.

Exam. Woodrow: But isn't he asking for the rate to Clearmont that is in effect now established in accordance with Ex parte No. 74? And what is that?

A. 56½ cents.

By Mr. Hagman:

Q. Well, what is it from Spokane?

A. From Spokane it is 60 cents.

Q. How much?

A. 60.

Q. It cannot be.

A. 47½.

Q. 47½ cents. That makes a difference of 10½ cents. So your reparation would be 10½ on that basis.

Mr. Campbell: For all shipments since the cessation of Federal Control, but during Federal Control it would be the difference between the two increases.

By Exam. Woodrow:

Q. What would be the difference between the two?
A. Four cents on Buffalo, two cents on Ucross.

122 Mr. Campbell: On the movement under Federal Control, and on movement since Federal Control we ask for the difference.

Exam. Woodrow: But for all the shipments involved in this proceeding, you seek reparation on basis of the difference between the rates paid and the rate that would have been paid provided one increase had been applicable, is that correct?

Mr. Campbell: That is right.

Mr. Hagman: For Federal-Controlled shipments.

Exam. Woodrow: For Federal-Controlled shipments, but those are the shipments in this proceeding.

Mr. Campbell: Well, yes, but yet we ask that the reparation be ordered on all shipments up to the time of the settlement in the prayer, so a different rule would be applied on those movements since Federal Control ceased.

Exam. Woodrow: But this case does not include those additional shipments, does it?

Mr. Campbell: No, they have not been made up, because I think at the time this complaint was brought it was still under Federal Control.

Exam. Woodrow: How do you intend to prove those additional shipments, in the event the Commission should award reparation?

Mr. Campbell: I expect the Commission will do as they usually do in cases where reparation is given—permit a chance to prove it.

123 Exam. Woodrow: On informal docket?

Mr. Campbell: Formal or informal either.

Exam. Woodrow: How do you justify your request, then, that the rates were unreasonable, and that a rate, a higher rate was a reasonable rate during Federal Control than at the present time?

Mr. Campbell: Well, I don't know that there was any difference, but we have not asked that the reparation be allowed down to the basis of reasonableness at that time, but only on account of this error in publication of tariff, and under interpretation by the orders.

Mr. Hagman: Your complaint does not split the thing up that way. There is only one issue there, and I want the record to show objection on behalf of the defendants to enlarging the issue as to any shipments whatever.

Mr. Campbell: Why yes, the complaint specifically prays for reparation on shipments up to the time of settlement, and that is all we have done.

Mr. Hagman: Yes, because of the double increase only.

Mr. Campbell: Oh, I think that is an assumption on your part.

Mr. Hagman: Read it.

Exam. Woodrow: What paragraph of the complaint do you refer to?

Mr. Hagman: Paragraph 9 of the complaint asks that
124 reparation be granted as shown in Exhibits A, B, C and D, et cetera, and that is figured on basis of a single increase instead of double.

Mr. Campbell: Also that they be ordered to pay complainants reparation on all other shipments——

Mr. Hagman: On the same basis.

Mr. Campbell: It doesn't say the same basis—between the date of this complaint and date of final settlement.

Exam. Woodrow: You may proceed with your cross examination. I think the record shows the position of both parties now.

Mr. Hagman: Now, before we leave this double increase feature, Mr. Brown, you in stating what you did with reference to General Order No. 28 and Freight Rate Authority 10, you simply stated your own personal opinion as to the proper construction of General Order No. 28 and that Rate Order, did you not?

Mr. Campbell: That is objected to as not proper cross examination. He did not do anything of the kind. He told what Rule 10 was, and it is in the record, and speaks for itself. That is a matter of argument, and, as I said before, we will argue that order 28.

Exam. Woodrow: I think the record shows that, and if you will dispense as much as possible with argument, the Examiner will appreciate it. You can ask the question if it was a matter of opinion.

I think the record shows that it was a matter of an expression
125 of his opinion.

Mr. Hagman: That is what I want to clear up. Before I can ask him any further questions I want to get my exhibits numbered correctly. I have got them wrong here.

By Mr. Hagman:

Q. Referring to your Exhibit No. 2, Mr. Brown, the rates on lumber and shingles from the Northwest to points in Wyoming were at the time these shipments moved, and still are blanketed at both ends, are they not?

A. Yes, sir, from all points of production.

Q. Now, will you state the limits, roughly, of the blanket on each end?

A. I think from the points of production, origination points, the Coast rate is applicable from all points west of the Cascades, and extending from northern Washington to lower Willamette Valley, in Oregon, and I think this 45 cent rate that we have been charged, that 45 cent rate that we have requested, that is the one that was in effect June 25th.

Q. You don't mean 45 cents?

A. The Clearmont rate of June 25th.

Q. You mean 65, don't you?

A. No, that is the Buffalo rate

Q. Exhibit No. 2——

A. 45 cents applied to Clearmont; 65 cents to Buffalo. I think that rate applies to practically all Colorado common points. I am

not certain about that, but it takes the blanket territory from
126 Colorado north.

Exam. Woodrow: 45 cent rate. The Examiner does not understand where you get that.

Mr. Hagman: That is one of the factors making up the——

The Witness: Making up the 65 cent rate; 45 from the Coast to Clearmont and 20 cents from Clearmont to Buffalo.

By Exam. Woodrow:

Q. And your contention is that that 45 cent rate at that time was a reasonable rate to Buffalo and that it should be increased under Ex parte 74 by 25 per cent, making 56½ cents, is that right?

A. Yes, sir.

By Mr. Hagman:

Q. Now, for how many miles, roughly, was that rate blanketed on the west end, point of production?

A. You mean north and south?

Q. Between the ends of the blanket. I want to get it just roughly.

A. I should say some 800 miles, on a guess.

Q. Now, the rate is blanketed at the Wyoming end also?

A. Yes, sir.

Q. What is the extent in miles there, roughly, of that blanket?

A. North and south in extent?

Q. Yes.

A. About five or six hundred miles.

Q. So when you take distances here in your Exhibit No. 2 and figure earnings per ton mile, it makes a good deal of
127 difference here as——

A. As the distances increase.

Q. —and the points you take in these blankets, doesn't it?

A. Yes, as the distance increases. In explanation, I took Birds, Colorado as one of my points because that was a blanket rate point, applied to a small line in Colorado in the blanket rate territory.

Q. Yes, and it was at the furtherest distance under the blanket?

A. I might have been able to find some line farther away, I don't know.

Q. So these figures as to earnings per ton mile would change depending on the town you use?

A. I call your——

Q. —in the blanket.

By Exam. Woodrow:

Q. Have you a point in this exhibit that shows the average haul in the blanket?

A. No, sir.

Q. To the average point in the other blanket?

A. No, I did not figure the average point of destination in the blanket, although I would think that Deadwood, South Dakota,

would probably be an average point, that is, a point half way, average point.

By Mr. Hagman:

Q. Do you think this exhibit is of any value to us in solving the question we have before us?

A. Certainly I do. I think it shows you the revenue that
128 resulted from the rates.

Q. Without knowing how much moved to these more distant points it does not mean anything, does it?

Mr. Campbell: Why not? Hasn't he got the right to compare that with the longer distance to show the long distance you are willing to haul this traffic for that rate, compared with his distance, which is very much shorter?

Mr. Hagman: Well, it is not shown how much traffic moved.

Mr. Campbell: It will be shown how much traffic moved, roughly.

By Mr. Hagman:

Q. Refer to your Exhibit No. 3, Mr. Brown. Will you please state what towns are included in the blanket on the Wyoming and South Dakota end? It commences just below Billings, does it not?

A. I do not quite get you. You mean on the 45 cent blanket—what towns are included in the 45 cent rate?

Q. Yes.

A. All points intermediate to Deadwood, South Dakota, on the Burlington, and all points there intermediate to Birds, and Loveland, betwen Billings and those points—are included.

By Exam. Woodrow:

Q. Points in this group save Buffalo?

A. Yes, sir.

Q. They are all in that blanket?

A. Yes, sir—shows on the map.

By Mr. Hagman:

Q. Are they also in the blanket from Spokane?

129 A. Yes, sir.

Q. Have you checked that up with the tariff?

A. My exhibit shows that rates from Spokane—for instance Exhibit 4 will show that. You will find lumber is the last item in the exhibit.

Q. What is the rate from Spokane to Spearfish?

A. To Spearfish, the present rate?

Q. Well, after June 25th?

A. 40 cents.

Q. The rate from Spokane is 38.

A. That is right, I will take that back—the two cent differential.

Q. Then the limits of the blanket are different on shipments originating in Spokane territory?

A. Spokane territory. That is not true, however, at Birds, Colorado.

Q. And now, referring to your Exhibit No. 4, you show from National a rate from June 25, 1918 of 65 cents, and to Spearfish, South Dakota, a more distant point, of 45 cents?

A. Yes, sir.

Q. Now, is it your contention that the Great Northern and the Northern Pacific and the C. B. & Q. should extend this blanket rate to points on an independent railroad? I call your attention to the fact that all points on this blueprint, No. 3 Exhibit, except Buffalo and Birds, are located on the main line of or branches of one
130 of the defendants, in this case, the *the* C. B. & Q.?

A. Yes, sir.

Q. Now, do you think that there is the same reason for extending the blanket to Buffalo that there is to these other points on the C. B. & Q.?

A. I think that if the 45 cent rate is a reasonable rate to Birds, Colorado, on the Great Western Railroad, then it is a reasonable rate to Buffalo, Wyoming.

Q. Well, we will go into this Birds feature of it later. I am not asking you that now.

A. I do not understand your question, then.

Q. My question is this: do you think that the same reason which actuated the Burlington to extend this blanket to Spearfish and Deadwood would exist for extending it to Ucross and Buffalo, on a railroad not owned or controlled by the C. B. & Q. or any of the defendants in this case?

A. I certainly do.

Q. For what reason?

A. Because, even though the Wyoming Railroad is not—was not a Federal Controlled Carrier, they took advantage of the rates authorized by Order 28 under the Administration, they were later relinquished, and the community of Buffalo, that is the business interests there are certainly entitled to the same rate that is extended to business interests some three or four hundred
131 miles further even though it is not on a branch line of one of the Federal-Controlled carriers or on one of the transcontinental carriers; in other words, I don't think just because they extend this through rate to Spearfish, on a branch line of the Burlington, 400 miles further, that the fact that Buffalo is located on a non-Federal Controlled line would be a justification for refusing them that rate.

Q. What do you consider the reason was for extending that blanket from South of Billings to distant points as Edgemont and Deadwood?

A. Because it has been the practice for years to blanket transcontinental lumber rates, and why they won't extend it to Buffalo I don't know—simply a practice of the carriers.

Q. A railroad can afford in some instances to blanket a rate to

more distant points on its own line where it could not do it to points on a connecting line not belonging to it, isn't that so?

A. That may or may not be true; depends on the rate and the return from that rate, whether they could afford to do it.

Q. If that rate were blanketed to Buffalo, as you ask, the charge received by the Burlington as far as Clearmont would necessarily have to be less than 38 cents on shipments from Spokane territory if the Buffalo road was to get anything?

A. They would have to absorb—the other carriers participating in the movement would have to absorb the division that was
132 paid to the Buffalo railroad.

Q. You do not answer my question. It is a fact that the Burlington would receive less for a shipment to Clearmont than it would to some point just south of Billings, for instance, wouldn't it, if it had to absorb part of the rate of the Wyoming Railroad, destined to Buffalo?

A. Destined to Buffalo, yes. That is the same thing as I stated before; they would have to receive less.

Q. Would you expect the Wyoming Railroad would take anything less than its local?

A. I never knew a division of a through rate that gave any carrier its full local or very seldom a division of a through rate that gives any carrier its full local.

Q. Do you think you are able to make up your mind that a rate of 38 cents can be extended to Buffalo without knowing what the financial condition and operating conditions of the Wyoming Railroad are, and as to how much they need to carry that shipment to Buffalo from Clearmont?

Mr. Campbell: That is objected to as not proper cross examination. On this question of divisions, the Commission has repeatedly held that if the carriers could not get together on what the division should be, the Commission themselves would fix it, and they are specifically given that authority now, as I understand it, under the law.

133 Exam. Woodrow: The question may be answered. Objection noted.

A. Yes, I think so. If the rate, the present rate on lumber, pine lumber, from Spokane returns the Wyoming Railroad Company something like 15 or 16 cents per ton mile, 16½ I think it is.

(The question was read.)

A. Carrying that shipment from Clearmont to Buffalo they would get 25 cents per 100 pounds for a 28½ miles haul, and I think that is sufficient revenue to enable them to reduce it.

Q. That is under Exparte 74?

A. Yes, present rates.

Q. Let us confine this to the rate after General Order No. 28. In other words, you consider simply the distance, isn't that a fact?

Isn't that the only fact that you consider—the distance from Clearmont to Buffalo?

A. In figuring——

Q. What a reasonable rate is?

A. That is one fact.

Q. What others did you consider?

A. I was going to say I consider water grade, cost of operation, but then I could not vouch for that—only second-hand information.

Q. You don't know everything about that?

134 A. And then I consider the showing of ton mile revenue.

Q. So that you consider this shipment should be carried 28½ miles from Clearmont to Buffalo for exactly the same charge as it should be carried 28 miles on the main line of the Burlington?

A. Yes, sir.

Q. And at the same time you know nothing about the conditions on the Wyoming Railroad?

A. No, I know nothing about them.

Q. Referring to your Exhibit No. 5, the earnings per ton mile that you show there would be more or less, according to the points on the blanket which you might select, isn't that true?

A. Yes,—Exhibit No. 5?

Q. Yes.

A. Yes, from the points of origination.

Q. Well, also as to the other end, at the points of destination?

A. There is only one destination.

Q. Well, there is a blanket at each end, is there not?

A. Referring to Exhibit No. 5, there is only one destination, and that is Buffalo.

Q. Well, that is true,—it will be just the blanket as to points of origin. Referring to your Exhibit No. 6, your purpose in getting up this Exhibit was to compare the earnings per ton mile if the Clearmont rate were extended to Buffalo, as compared with the earnings to Birds?

135 A. Yes, sir.

Q. To be of any value, such a comparison would have to involve similar railroads, operating conditions and traffic conditions, is that true?

A. I would not say to be of any value, no. I think it is of value for the purposes intended, without knowing anything about operating conditions.

Q. Do you know anything about the operating conditions on this G. W. R. R.?

A. No, sir, I do not.

Q. How much traffic they carry?

A. No, sir.

Q. What their earnings have been, or how much charge it is necessary for them to make to earn any revenue?

A. All I know is that the rate is the same to Birds as it is to Clearmont.

Q. Do you know anything about the competitive conditions that

might exist with reference to Birds that do not exist with reference to Buffalo?

A. I cannot imagine that there could be any competitive conditions there that would force that rate.

Q. And again in this exihibit as in another one, you simply considered the distance, did you not?

A. Yes, and showing the reasonableness of the rate that
136 obtained.

Q. And in figuring only distance, you did not distinguish between little, short independent lines and the same distance on the main line of a transcontinental railroad?

A. Well, I have shown here rates, for instance, to Birds, a point an equal distance from the junction, Loveland, as the distance would be to Buffalo on another short, little independent line where the rate is now established.

Q. Exhibit No. 7 is the same as Exhibit No. 6 except that it compares car mile earnings instead of——

A. Yes, car mile earnings should be corrected to show in cents instead of dollars.

Q. And what you said with reference to the previous exhibit is equally true with reference to this Exhibit No. 7, is it not?

A. Yes, sir.

Q. Do you know whether any joint rates to points on the Burlington Railroad are maintained on any other commodities?

A. I did not look it up, but I believe that you will find they are, both east and west on transcontinental traffic.

Q. Do you consider that a rate for a two-line haul should be any higher than for a one-line haul?

A. No, sir.

Q. You do not agree with the Commission in that?

A. Not in all instances.

Q. Well, do you here?

137 Mr. Campbell: He said no.

A. I said no, here.

By Mr. Hagman:

Q. Now, in asking for a lower through joint rate, are you claiming that the present rate is unreasonable—that both factors of the present rate are unreasonable, or only one?

A. I am not claiming to say that both or one of them are unreasonable. I do claim that the rate obtained from the two factors is an unreasonable rate.

Q. And you are able to say that without knowing anything about the Wyoming Railroad?

A. Yes. I presume that the rate that applies to Clearmont is a rate established by the Commission in some one of the various lumber cases that they have heard and decided in the last ten or fifteen years.

Q. Well, in view of the fact that that rate to Clearmont has been

established by the Commission, and the present rate is that same rate increased, do you say that is unreasonable?

A. I would not say that that was unreasonable, no.

Q. So you admit that the factor up to Clearmont is reasonable?

A. It may or may not be. I have made no study of that factor except as you see here. Now, if it is a rate that has resulted from an order of the Commission, then in all probability it is a reasonable rate; but when you extend that reasonable rate for 1,700 miles and refuse to extend it 28 miles, then you have a situation I am
138 complaining of.

Q. Notwithstanding the fact that you have got another railroad to deal with?

A. We are complaining of the through rate in and of itself.

Q. Doesn't it come down to this, then, that you claim the unreasonable part of this haul under such a rate is on the Wyoming Railroad?

A. No, I don't say that—I won't say that; I won't say that that is the unreasonable part of the haul. I think the rate that results from the two combinations is unreasonable. Which factor is the most unreasonable, I don't know.

Q. That is rather inconsistent with the statement you just made.

A. Possibly I did not quite get your first question right.

Q. If it should develop during the course of this case that the Wyoming Railroad was a little short road in a sparsely settled country and required five or six times as high a rate as the Burlington to exist at all, would that change your opinion as to whether you could compare that railroad with similar mileage on the C. B. & Q.?

A. No, because even though, as you say, it might be a short, poor road, I think the establishing of a through rate to Buffalo would greatly increase its volume of traffic and build up the territory at Buffalo to the extent that it would return them an equal revenue to what they get now. It would not reduce the rate the en-
139 tire amount in all probability. They would get a division from the transcontinental carriers that would be somewhere nearly equal to their local rate.

Q. Would you expect the transcontinental carriers to absorb the difference?

A. Well, that is true in the natural course of events.

Q. And the Commission has already held that rate reasonable up to Clearmont?

A. I did not say that. I say I presume that is a commission-made rate. I don't know it to be true.

Mr. Campbell: Held it reasonable and approved it too.

The Witness: They held it reasonable to Clearmont.

By Mr. Hagman:

Q. Well, that comes back to the same thing again, doesn't it, that you consider only distance and not earnings or operating conditions or traffic conditions or anything like that?

Mr. Campbell: I submit that counsel has been over that three or four times, and he is taking up time unnecessarily.
Exam. Woodrow: The record will show that.

A. I answered all those questions, in preparing this statement, of what I intended to show.

Mr Hagman: That is all I have now.
Exam. Woodrow: Any questions, Mr. Campbell?

Redirect examination.

By Mr. Campbell:

Q. What is the distance from Laurel to Birds, or from
140 & 141 Laurel to Loveland, say?
A. From Billings to Birds is 614 miles.
Q. What is it from Laurel to Birds?
A. From Laurel, I think there is just ten miles difference.
Q. What is the distance from Laurel to Buffalo?
A. From Laurel? I figured on Billings.
Q. And what is the distance from Billings to Buffalo? Mr. Brown, you figure up those distances and have them in the morning. I would like to know the distance from Laurel to Billings, Billings to Clearmont, Clearmont to Buffalo, and from Laurel to Loveland and from Loveland to Birds.

Exam. Woodrow: You may ask him those questions in the morning. Are there any other questions?

By Mr. Campbell:

Q. Mr. Brown—if I could ask him one or two in the morning that will finish it up as far as I am concerned.

Exam. Woodrow: That will be satisfactory to the Examiner. We will take a recess until 9:00 o'clock in the morning, gentlemen.

(Whereupon at 5:20 P. M. September 16, an adjournment was taken until 9:00 o'clock A. M., September 17, 1920.)

142 Spokane, Washington,
Sept. 17, 1920—9.00 o'clock a. m.

Met pursuant to adjournment.

Present: Parties as previously noted.

R. S. Brown resumed the stand.

Redirect examination (continued).

By Mr. Campbell:

Q. I asked you last night, Mr. Brown, for some distance figures. Have you those?

A. The distance from Laurel to Clearmont, Wyoming, is 196.1 miles; the distance from Clearmont to Buffalo is 28½ miles; the distance from Laurel to Buffalo is 224.6 miles; the distance from Laurel to Loveland is 595.2 miles; from Loveland to Birds 4.1, making a distance of 599.3 miles from Laurel to Birds.

Mr. Campbell: I think that is all I care to ask Mr. Brown now.

Mr. Hagman: I have no further questions.

By Exam. Woodrow:

Q. Your testimony, Mr. Brown, has dealt entirely with the allegation of unreasonableness under Section 1, has it not?

A. Yes, sir.

Q. You did not intend to develop any facts under any other Section?

143 A. No.

Mr. Campbell: No, we have other witnesses for that purpose.

Exam. Woodrow: You may stand aside. Call you next witness.

(Witness excused.)

P. M. BACKUS was thereupon called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Campbell:

Q. Give your full name to the Reporter.

A. P. M. Backus.

Q. Where do you reside?

A. Buffalo, Wyoming.

Q. What is your business?

A. Engaged in the retail lumber business.

Q. Do you hold an office in either of these complaining companies?

A. President of the Buffalo Lumber Company.

Q. How long have you lived in Buffalo?

A. Since February, 1916.

Q. You are familiar with the conditions in and around Buffalo?

A. Yes, sir.

Q. Mr. Backus, did your company pay the expense bills shown on the complaint for shipments by the Buffalo Lumber Company?

(Witness examines expense bills.)

Exam. Woodrow: Mr. Campbell, the Examiner thinks it may be well to frame that question in a different manner as to ask
144 when the shipments involved in this complaint moved, and if they paid and bore the charges thereon, and there appear to be so many shipments they will be submitted under Rule 5.

By Mr. Campbell:

Q. Supposing I ask it this way: did the shipments move at the time and in the manner specified by the exhibits in your complaint?
A. They did.
Q. And did your company pay the charges as shown by the continuation of Exhibit "B" in said complaint?
A. We did.
Q. Is that matter as the Examiner wants it?

Exam. Woodrow: That is all right, sir.

By Mr. Campbell:

Q. Mr. Backus, what is the nature of your business at Buffalo?
A. It is a retail lumber business.
Q. You are not a manufacturer?
A. No, sir.
Q. You buy lumber, you go out in the market and buy lumber to the best advantage you can, ship it in there, and it is sold at retail?
A. Yes, sir.
Q. Do you handle coal?
A. No, sir.
Q. Anything but lumber and shingles, lumber products?
A. Lumber and building materials.
145 Q. What is your competition there, Mr. Backus?
A. We have one competitor in the town, the Pioneer Lumber Company. Then of course we are competing more or less with the surrounding towns.
Q. How does the fact that the lumber rate is blanketed all over that territory and not blanketed to Buffalo affect your business?
A. It works rather a hardship on us. The towns on the main line have and enjoy a much lower rate than we do.
Q. And can they and do they compete right into your town?
A. We have no instances where they have competed right in Buffalo, but they naturally cut off our territory.
Q. In what directions and in what way? Just explain fully.
A. Well, to Sheridan, which is 38 miles north of us on the main line of the Burlington, they enjoy the blanket rate, and for that reason we are limited to about eight miles north of us.

By Exam. Woodrow:

Q. Where is Sheridan with respect to Billings? It is not shown on Complainant's Exhibit No. 3.

Mr. Brown: Between Billings and Clearmont.

Q. How did you figure that distance, Buffalo to Sheridan?
A. That is a wagon road between Sheridan and Buffalo.
Q. And you sell your lumber by wagon? You don't attempt to ship it by rail?
A. Well, we ship our lumber—it comes in by rail from
146 Clearmont. I was talking about the farmers that live between Buffalo and Sheridan. They naturally cannot afford to come to Buffalo further than eight miles out from Buffalo; they go to Sheridan.

By Mr. Campbell:

Q. And your territory north of Buffalo is virtually cut off entirely is it, by this rate structure?
A. Yes, sir.
Q. In other words, Clearmont and Sheridan get their commodities by the blanket rate while you have to pay the arbitrary over Clearmont of 25 cents?
A. Yes, sir. There is another yard at Ulm. That is between Sheridan and Clearmont—and we have them to compete against too.
Q. Is there one at Arvada?
A. Yes, sir.
Q. Is there any between Buffalo and Clearmont?
A. Yes, sir.
Q. What point is that?
A. Ucross.
Q. That is one of the points where you are also asking for joint blanket through rates?
A. That is owned by the Pioneer Lumber Company. We are not asking it.
Q. Have you any competition from Caspar?
A. Yes, sir.
147 Q. Where is Caspar located?
A. It is on the N. W. and the Burlington in the southern part of the State.
Q. Are they within the blanket?
A. Yes, sir.
Q. How does your competit-on come with Caspar?
A. The distance from Buffalo to Caspar is approximately 135 miles. We have not competed with them until just recently. There is a new oil field being opened up about twelve miles south of Kaycee.
Q. South of what?
A. Kaycee, a little inland town, and this new oil field is approximately 60 miles from Buffalo and approximately 75 from Caspar.

Exam. Woodrow: Now, where is Kaycee?
Mr. Campbell: Between Buffalo and Caspar; doesn't show; it is a little inland town where this oil has recently been discovered.

By Mr. Campbell:

Q. How would that be in relation to Sussex?
A. Kaycee is about 20 miles west of Sussex.
Q. So that could be marked on the map. Now, Caspar is within the blanket?
A. Yes, sir.

Q. While Buffalo, if you wanted to reach Kaycee, it is a
148 shorter distance than it is from Caspar, but you have to pay this arbitrary of 25 cents which Caspar does not have to pay?
A. Yes, sir.
Q. What is the distance, if you know, from Laurel to Caspar?
A. I could not answer that.

Mr. Campbell: May we supply the record with the distance later?
Exam. Woodrow: Yes.
Mr. Campbell: The distance from Laurel to Caspar.
Exam. Woodrow: The map will show. Where is Caspar with respect to Birds?
Mr. Campbell: Caspar is north of Birds. Birds is in Colorado and Caspar is about the center of the map, almost directly south of Kaycee—almost directly south of Cedar Cliff, right at the junction of the Sweetwater River. I would like to supply that distance from Laurel to Caspar and from Billings to Caspar.

By Mr. Campbell:

Q. Let the record show the distance from Billings to Caspar is 320 miles. Mr. Backus, are you familiar with the operating conditions of the Wyoming Railroad?
A. I don't understand just exactly what you mean.
Q. Well, as to grade on the road to Buffalo.
Exam. Woodrow: Before you start on a different line, Mr. Campbell, Caspar would be the only town, Mr. Backus, to furnish lumber to Kaycee, this new oil town? Would not the other towns
149 on the Burlington branch from Laurel to Caspar be nearer? Isn't it the logical town from which to ship this commodity?
A. Caspar is the nearest town to this new oil field, that is, on that line.

By Exam. Woodrow:

Q. How far is Thermopolis from this oil field?
A. Thermopolis is across the Big Horn mountains, across the mountain range.

By Mr. Campbell:

Q. Is there any other road in there from Thermopolis?
A. Oh, you can go by auto. It is a long, round about way down around in the mountains.
Exam. Woodrow: The map I think does not show the mountains;

it just shows the distances that these towns along the Burlington would be nearer than Caspar.

By Mr. Campbell:

Q. But in any event if they did go in from those towns, any of those towns there on the Burlington, they enjoy the blanket rate, do they not?

A. Yes, sir.

Q. So that your competition would be the same and you would be the same distance, even if it did go in from any of those other towns.

Exam. Woodrow: The Examiner would like the record to show, however, just what towns enjoy preferential treatment that compete with the Buffalo company.

150 By Mr. Campbell:

Q. Well, are there any other towns where supplies are going into the Kaycee district except Caspar and Buffalo?

A. Not that I know of.

Exam. Woodrow: As the Examiner understands it so far, the towns mentioned are Ulm, Clearmont and Caspar.

Mr. Campbell: And Arvada.

By Exam. Woodrow:

Q. And Arvada. Are there any other towns where you have competition?

A. No, practically not.

By Mr. Campbell:

Q. Are you familiar with and have you been over the line between Buffalo and Clearmont frequently?

A. Yes, sir.

Q. Are you familiar with the grades or the operating conditions of that line, so far as appearances go, in going over it?

A. Why, regarding grade, it follows a creek, Clear Creek, from Clearmont to Buffalo.

Q. So that it is a water grade?

A. Yes, sir.

Q. What is the nature of the country surrounding Buffalo and Clearmont? What is the nature of the industries in and about there?

A. You take along the line of this Wyoming Railway it is all farming district.

151 Q. Sparsely or well settled?

A. Well, it is all irrigated land and developed, settled up, becoming more and more settled up all the time.

Q. Is it a comparatively new district?

A. It has been farmed for many years, but now some Danish people are coming in, taking up and buying this land.

Mr. Campbell: I think you may inquire.

Cross-examination:

By Mr. Hagman:

Q. Mr. Backus, the shipments which were made to the Buffalo Lumber Company are shown in Exhibit "B" on page 7 of the complaint, are they not?

A. Yes, sir.

Q. Twelve in number. You are engaged in the retail lumber business in Buffalo?

A. Yes, sir.

Q. And I presume you bought these cars of lumber, had them shipped to you as consignee at Buffalo?

A. Yes, sir.

Q. Did you buy them f. o. b. Buffalo or point of shipment?

A. Bought them f. o. b. Clearmont.

Q. So that you paid a fixed price for the lumber delivered at Clearmont?

A. Yes, sir.

Q. And then you paid the charge made by the Wyoming Railway?

A. Yes, sir.

152 Q. Did the person from whom you purchased these cars at any time reimburse you for the charges which you paid to the Wyoming Railway?

A. No, sir.

Q. That came out of your own pocket?

A. Well, I don't know—coming out of our own pocket; I guess practically it is.

Q. What difference is there in the price of lumber, your price of lumber at Buffalo, and the price at the same time at Sheridan and other points on the main line of the Burlington?

Mr. Campbell: I would like to have the record show that this is objected to as incompetent, irrelevant and immaterial, and inadmissible under the Dalzell Case, in order that we may preserve our rights; and as not cross examination.

Exam. Woodrow: The objection is noted. The question will be answered.

(The question was read.)

A. We try to get the main line prices, that is, the prices at which lumber is sold at Sheridan and Clearmont, plus the freight that we pay on the Wyoming Railway, but we cannot always do that.

By Mr. Hagman:

Q. But when you can do that, you make the same price that the man on the main line at Sheridan, for instance, does?

153 A. Yes, we try to do that.

Q. And are you able to say in how many instances you were unable to protect yourself against the charges on the Wyoming Railroad in these shipments referred to in your complaint?

A. No, sir, I could not say that.

Q. Well, as a general thing, would you say that you sold the lumber mentioned in this complaint for sufficient to offset that charge that was made by the Wyoming Railroad Company?

A. As a general thing, we cannot do that.

Q. Well, you are unable to give us any definite figures, then, I assume?

A. No, I cannot give you any definite figures on that.

Q. So that on some of these shipments you passed the extra charge that you had to pay on account of being located on the Wyoming Railroad, on to the consumer?

A. Yes, sir.

Mr. Campbell: This objection I assume will show as going to all this testimony without objecting to each specific question, that is, to this line of testimony, on the ground that it is inadmissible under the Dalzell Case. I don't want to be objecting each time.

Mr. Hagman: That is understood.

Exam. Woodrow: The record will be clear on that point that you will have a standing objection to this line of questioning.

By Mr. Hagman:

Q. If you had a cheaper rate into Buffalo than you have

154 now, in a great many instances it would not make any difference in your profit in the way you have been doing business, would it?

A. You mean our profit as a whole or our lumber business?

Q. On the lumber business.

A. If we had a cheaper rate our profits would certainly be better. We could do more business, taking it in general terms.

Q. Well, you mean that you would be able to sell more lumber, is that the idea?

A. Yes, sir, we could sell lumber cheaper, and we could take in a larger territory, and selling lumber cheaper, we could certainly sell a lot more of it.

Q. But as far as your profits are concerned, they would not be any different, because you say now you are passing that extra charge on to the consumer?

A. Our profits per thousand feet would not be any greater, no.

Q. That is what I mean.

A. The consumer would get a lower price.

Q. At what places does your company maintain lumber yards?

A. We have a yard at Buffalo; a small yard at Kaycee, Wyoming.

Q. The lumber you buy for your Kaycee yard, I presume you ship to Caspar?

A. No, sir, ship to Buffalo.

Q. And then take it down to Kaycee?

155 A. Yes, sir.

Q. Wouldn't it be cheaper for you to ship it to Caspar and take it up to Kaycee?

A. No, sir.

Q. How can there be any competition, then, from Caspar, because of the blanket rate at Caspar, when you can afford to ship over the Wyoming Railway at 20 cents and haul it clear down to Kaycee?

A. Because these new oil fields are within ten miles of Kaycee.

Q. What I am getting at is this; you stated that maintaining this blanket rate down to Caspar worked a discrimination, didn't you?

A. I did, regarding these oil fields, yes, sir.

Q. Well, if that is true, and that is a more favorable rate, why do not the people around Kaycee buy from Caspar?

A. It is 85 miles from Caspar to Kaycee.

Q. Well, then, if they do not buy from Caspar because of the distance, how are you damaged by any rate that might be maintained to Caspar?

A. We are damaged—we cannot get into this oil field; we are paying 25 cents a hundred more than the Caspar people's rate.

Q. Perhaps I do not make myself clear; where are these oil fields located with reference to Kaycee?

A. They are about ten miles south.

Q. And is there a road between these oil fields and Caspar?

156 A. Yes, sir.

Q. Do any of the people at the oil field wanting lumber ever go to Caspar for it?

A. Yes, sir.

By Exam. Woodrow:

Q. What is the mileage from Buffalo to the oil fields?

A. About 60 miles.

Q. And you take this lumber over roads?

A. Yes, sir, by trucks.

Q. By truck?

A. Yes, sir.

By Mr. Hagman:

Q. Now, at the present time what would it cost a man at these oil fields to go to Caspar and get lumber and get it back to the oil fields?

A. I don't know what those trucking companies are charging from Caspar to the oil field.

Q. But you are able to maintain this yard at Kaycee and sell lumber to the oil fields and make a profit?

A. We have not yet, no, sir. We haven't sold any lumber to them yet.
Q. Who are your customers at Kaycee?
A. They are ranchers around there.
Q. How long have you been maintaining that yard at Kaycee?
A. Since 1916.
Q. Then your customers there are the ranchers in the vicinity of Kaycee?
157 A. Yes, sir.
Q. Do any of those ranchers go down to Caspar?
A. Some of them do,—have gone there.
Q. Do they get a better price by going down to Caspar?
A. Yes.

By Exam. Woodrow:

Q. At a price delivered at Caspar—do they buy their lumber at Caspar?
A. Yes, sir.
Q. And do their own individual hauling?
A. Yes, sir.

By Mr. Hagman:

Q. How can they get it to Kaycee? Let us speak of the price of lumber at Kaycee; can they get it to Kaycee cheaper by going down to Caspar than by going to Buffalo for it?

Mr. Campbell: It does not seem to me as though that is quite a fair question when he has stated that these ranchers down there buy it at a cheaper price and do their own trucking. Of course we all know that the rancher does not count his own work, as a rule, but that is the competition he has to meet, however. The same is true if you haul from Buffalo.

Mr. Hagman: What I am getting at is this; he has stated that maintaining this blanket down to Caspar works discrimination against him. I am trying to find out just why, and to what extent.

Exam. Woodrow: The Examiner thinks that the question is proper. There is a 60 mile haul from Buffalo by truck and
158 an 85 mile haul from Caspar by truck to Kaycee. Now, it is proper to see how much it would cost to haul lumber 85 miles by truck from Caspar to Kaycee and how much it costs to haul lumber from Buffalo to Kaycee.

By Mr. Hagman:

Q. Now, maybe we can get at it in this way; Mr. Backus, suppose you were living at Kaycee now, and wanted to build a house and wanted to get some lumber. Could you go to the Buffalo Lumber Company at Kaycee and buy that lumber as cheap as you could go to Caspar and buy it and then haul it back to Kaycee?
A. It would all depend on what it would cost me to get it, and haul from Caspar to Kaycee. I don't know what they figure.

Q. Well, what percent of the lumber sold in Kaycee and that vicinity, does your firm sell?

A. We sell practically all the lumber north of Kaycee, between Buffalo and Kaycee; we sell west of Kaycee and east of Kaycee.

Q. Well, is there any lumber used just south of Kaycee?

A. There has not been up until just here within the last month, I should say—not quite that long.

Q. If you are able to do all the business around Kaycee, as you have stated, how does the maintenance of any rate to Caspar work a discrimination against you?

Mr. Campbell: He has just stated that field has opened up within 30 days, but that he has not been able to enter that field on account of the rate structure.

159 Exam. Woodrow: When the complaint was brought, he had no complaint against that rate to Kaycee.

Mr. Campbell: No, not at that time, but he has now, because within a month there has opened up this oil field, and he has made it clear, it seems to me, that because of the rate structure he is not able to reach the territory of the oil field at all.

By Mr. Hagman:

Q. What other reasons are there that you cannot get into the oil field besides the one that you have assigned? Is there a road in there?

A. There is a road under construction. I understand you can get in within about three miles on a good road, and the County Commissioners say that they are working on a road over those three miles.

By Exam. Woodrow:

Q. Do you do your own trucking from Buffalo to Kaycee?

A. Yes, sir, we have our own trucks.

Q. How much does it cost you per thousand feet to take your lumber down to Kaycee?

A. We figure from $25.00 to $35.00 a thousand.

Q. Does it cost twice that much to haul it from Caspar the 20 miles of additional haul?

A. Yes, sir, costs at least that much.

By Mr. Hagman:

Q. Cost more, wouldn't it?

A. Yes, sir.

160 Q. Now, when this road is built into the oil fields, do you expect to do business in the oil fields from your Kaycee yard?

A. We are going to try to—come mostly directly from Buffalo.

Q. Do you expect to be able to do business in there?

A. That is what we are going to try to do. It is going to be a hard proposition when we have our 25 cents per hundred pounds extra to pay on the Buffalo end.

Q. How much a thousand is that 25 cents?

A. Well, it runs from $6.00 to $7.50 a thousand.

By Exam. Woodrow:

Q. But you always have the privilege of buying it at Caspar and taking it up to Kaycee, haven't you?
A. Yes, we have that privilege.

By Mr. Campbell:

Q. But you have no yard at Caspar?
A. No, sir.

By Mr. Hagman:

Q. Now, just to summarize this before we leave it, up to this time you have been able to do business at Kaycee and in the vicinity of Kaycee have sold practically all the lumber used in that vicinity. That is correct, is it not?
A. Yes.
Q. And the rate to Caspar has not made any difference with reference to your business at Kaycee so far?
161 A. Oh, it has made a difference, yes. As I said before, some of them go to Caspar.
Q. And what you are apprehensive about is getting into this oil field in the future?
A. Yes, sir.
Q. And there is no road in there yet so that you do not know so far on what terms you can compete in there?
A. No, not exactly.
Q. And the rate to Caspar is more favorable than from Buffalo, and you can get your lumber up to the oilfields from Caspar?
A. No, we could not, unless we would establish a lumber yard at Caspar, and we cannot do that.
Q. You can have carloads of lumber shipped to Caspar and trucked without having a yard at Caspar, can't you?
A. We could do that, but it is a very expensive proposition.

Mr. Campbell: Are you maintaining that you can compel by a rate structure, a man to locate and establish a business at a certain locality?

Mr. Hagman: No, by no means. I am trying to work out how this rate to Caspar affects his business, how it works discrimination. I have been unable to get that through my head.

By Mr. Hagman:

Q. Now, the other points you stated that were being preferred by the maintenance of this blanket rate on the Q. I think you said were Sheridan, Ulm and Arvada?
162 A. Yes, sir. No, I did not state that we had any competition at Arvada; we do not compete with Arvada.
Q. Just where are the consumers located who go to the main line of the Burlington and buy their lumber instead of going to Buffalo, because of this difference in rate?

A. They are located all along the road between Buffalo and Sheridan.

Q. There is a highway, is there not, between Buffalo and Sheridan?

A. Yes, sir.

Q. And it is the people who are located along and tributary to this highway who go up to the main line of the Burlington and buy their lumber instead of from you?

A. Yes, sir.

Q. Now, are there any other reasons why the people along this Highway should go to Sheridan to buy their lumber, besides the difference in the price? What I mean is this: do they buy their groceries and other things at Sheridan?

A. I presume they do, yes, sir.

Q. Can you think of any other reason why they should go to Sheridan for their lumber besides the difference in the rate that you have mentioned?

A. The difference in the price is the only reason they did so. It is an easier road, the road is better to come to Buffalo; it is up
163 the hill over half way to go to Sheridan, and to Buffalo it is an easier grade, coming into Buffalo.

Q. Now, at the present time, how far north of Buffalo along this road have you been able to do business?

A. About eight miles from Buffalo north.

Q. After you get north of that eight miles they find it is to their advantage to go to Sheridan?

A. Yes, sir.

Q. But the people within eight miles of Buffalo find that the cost of hauling from Sheridan is more than the cost of paying the extra freight charge when they go to Buffalo.

A. Yes, sir.

Q. Now, if you had the same rate to Buffalo that Sheridan has, how far north would you expect Buffalo to do business?

A. I would expect Buffalo to do business half way to Sheridan.

Q. That would be about 19 miles?

A. 19 or 20, yes.

By Exam. Woodrow:

Q. What was your testimony with respect to the road from Sheridan to Buffalo?

A. I said that the road was a better grade from Buffalo north. There is quite a divide between Buffalo and Sheridan, and these people living within eight miles of Buffalo have to pull over this divide to get into Sheridan.

Q. Then it would be a better grade south, wouldn't it? The road to Buffalo would be better than to Sheridan?

A. That is what I say, yes, sir; the road is a better haul
164 out from Buffalo north than it is for them to go to Sheridan.

Q. Where is this divide, how far from Buffalo?

A. It is about half way *way;* it is a little more than half way from Sheridan to Buffalo. In the winter time and the wet time

of the year, the road is more sandy on the Buffalo side of the divide, and the roads do not get as muddy.

Q. A person on the other side of the divide would naturally go to Sheridan, though?

A. Yes, sir.

Q. And a person on the side nearer to Buffalo would go back to Buffalo?

A. Yes, sir.

Q. If the rate was the same.

A. Yes, sir.

Q. That divide comes about Eighteen miles from Buffalo?

A. Yes, sir. It is right around eighteen miles north of Buffalo.

Q. Is the country over the sand eight or ten miles between the point where you do business and the divide thickly settled?

A. It is not nearly as thickly settled as on the Sheridan side of the divide.

Q. If the rate were the same you would not expect to get as much business as Sheridan man, as the Sheridan dealer, because of the sparsity of population nearer Buffalo?

A. We should get about the same for this reason; there is a little town between Sheridan and Buffalo called Story; it is
165 a summer resort place; a lot of people from Sheridan own some homes out there, and this last summer there have been quite a number of homes built there, and all of this business has come from Sheridan, notwithstanding the fact that they have to pull up over what we call Tunnel Hill, which is quite a haul, and makes a distance of about 23 miles from Sheridan to Story, while we are about 20 miles from Buffalo to Story and we have no hill to pull over. If we had the same rate from Sheridan there is no question but what we could have done more than half of this business that has been done at Story.

Q. Do you deliver your lumber?

A. We do if we get paid for it.

Q. Do your competitors deliver their lumber?

A. They have no branches of their own. I think they get delivered prices and hire some trucking people to haul it. I understand they do.

Q. How does your delivered price at Story for the haul compare with the freight rate from Clearmont to Buffalo?

A. We haven't delivered any at Story.

Q. How would it compare if you were to have the business, along your scale of delivered prices?

A. It would be about 40 cents per 100 pounds if we hauled it by truck from Buffalo to Story—depending on the rates and the time of the year.

Q. That would be almost twice as much as you pay from
166 Clearmont down?

A. Our rate is 25 cents now.

Q. Do you think it is unreasonable for the Wyoming Railroad to get 25½ cents that you charge 40 cents for—a shorter haul?

A. I do not see how you can compare a truck haul with a railroad haul.

Mr. Campbell: There isn't any question here as to trucking rates, as I understand it.

Exam. Woodrow: The Examiner had the question in his mind, and therefore he asked it. If it is irrelevant the record will show.

By Mr. Hagman:

Q. Mr. Backus, how much of a difference would you have to have in order to compete with the people from Sheridan—how many dollars per thousand or cents per 100 pounds?

A. Well, we should have—our lumber should cost us the same as the Sheridan people, if we try to compete with them.

Q. You could complete with them if you could get it in Buffalo at the same price?

A. Yes, sir.

Q. I presume the people at Buffalo desire to have that Wyoming Railroad continue to operate in there?

A. I presume so, yes, sir.

Q. And they would not care to go back to the old days
167 of hauling everything from the main line of the Burlington?

A. No, I hardly think so.

Q. I assume also they want to see the Wyoming Railroad Company charge sufficient rates to be able to continue to exist?

A. Yes, I think so.

Mr. Hagman: I think that is all.

Redirect examination.

By Mr. Campbell:

Q. Mr. Backus, farmers as a rule do not hire trucks to deliver their lumber to them, do they?

A. No, sir, they usually have their teams or their own trucks.

Q. And do their own delivering?

A. Yes, sir.

Q. Now, no matter where you attempt to do business in that territory you do have that handicap of $6.50 to $7.50 per thousand which Sheridan is able to make on account of the freight rate.

Mr. Hagman: I do not ordinarily object to leading questions, but you are going pretty far.

Mr. Campbell: This is redirect.

Mr. Hagman: I know, but ask him the question.

Exam. Woodrow: Restate your question, please, Mr. Campbell, to obviate the objection.

By Mr. Campbell:

Q. I don't think that is a leading question. I am asking him if there is any point in there in that territory surrounding Buffalo, between Buffalo and Sheridan where you do not have to over-
168 come the handicap of $6.50 to $7.50 per thousand?

A. Yes, sir.

Q. Where is that?

A. I did not understand. No, there is no point.

Q. And is that also true for the oilfields or Caspar?

A. Yes, sir.

Q. And is it possible for you to reach the oilfields around Kaycee in competition with Caspar without absorbing or in some way overcoming this handicap in rates?

A. No, sir.

Q. Now, if your rate was the same as Caspar, Sheridan and Clearmont, would you or would you not be able to extend your territory and business?

A. We would.

Q. Would it increase the business of the Wyoming Railroad?

A. It certainly would.

Q. Now you stated, Mr. Backus, that some of this lumber was bought f. o. b. Clearmont. Who pays the freight on that lumber that is delivered f. o. b. Clearmont—who pays the freight to Clearmont?

A. We do.

Q. Even though it is bought f. o. b. Clearmont. How is it handled in regard to the freight?

A. We pay the Wyoming Railway Company the total amount of the freight bill, including the freight charge on the trunk
169 lines, and their charge for bringing it from Clearmont to Buffalo.

Exam. Woodrow: The Examiner understood you bought all of your lumber f. o. b. Clearmont.

Mr. Campbell: I will explain that. That is what I am getting at now.

The Witness: We do.

By Exam. Woodrow:

Q. You do buy all of your lumber f. o. b. Clearmont?

A. Yes, sir.

By Mr. Campbell:

Q. Explain how that is done.

A. I started to tell you the way those freight bills are handled. The Agent of the Wyoming Railroad Company at Buffalo collects for the full amount of the freight rate on the car, including the amount charged by the trunk lines and the amount charged by the Wyoming Railway Company. Then when we settle with the lumber

companies for this lumber, we deduct from our invoice, the amount of freight paid from the point of origin to Clearmont.

Q. So that you pay then, what for your lumber?

A. We pay delivered price.

Q. The delivered price, does it or does it not include the freight?

A. It does.

Q. So that you in final payment of this lumber actually
170 pay these freight bills?

A. We do.

Q. As a part of the purchase price of the lumber?

A. Yes, sir.

By Exam. Woodrow:

Q. The Examiner does not understand that. He understands that you get credit from the lumber company for the freight rate from origin to Clearmont, as such.

A. Yes, sir.

Q. And therefore you do not pay and bear that part of the transportation charge; you are only paying and bearing the transportation charge from Clearmont to Buffalo, is that right?

A. No, sir. The mills have what they call the mill price. In figuring out their delivered rates they take their mill price and add the amount of the freight to the price, so we are paying the freight, just the same as though we bought it at the mill. We pay the freight.

Q. What did you mean, then, by saying you buy f. o. b. Clearmont? Why don't you buy it f. o. b. mill?

A. Because they won't sell it to us that way.

Mr. Hagman: That is the usual way of selling lumber in this country, Mr. Examiner. It is f. o. b. Clearmont. Then the purchaser pays the freight up to Clearmont and deducts that from his invoice price.

Mr. Campbell: The freight is added to the invoice. The price, as I understand it, is the mill price; then the freight is added
171 and that is billed with the entire amount, including the freight, and he pays it and deducts the freight from the invoice, to which the freight had been added; so that in actuality he pays the mill price plus the freight to Clearmont.

Exam. Woodrow: Then the statement that he buys lumber f. o. b. Clearmont is a fiction?

Mr. Campbell: It is, in actual practice it is a fiction.

Exam. Woodrow: And in reality——

Mr. Campbell: In reality it is a fiction.

Exam. Woodrow: And therefore if any reparation is granted in this case by the Commission, the Buffalo Lumber Company would be entitled to the reparation?

Mr. Campbell: Absolutely.

Mr. Hagman: I don't think there is any question about that. That is, I am willing to admit that they paid it. But as I stated

before, I am making the point that he passed it on to the consumer. I am not waiving that.

Exam. Woodrow: The Examiner understands that point, but this f. o. b. Clearmont proposition had him confused, and he wants it cleared up that in the event the Commission should award reparation there is no question as to the complainant having paid and bore the charges.

Mr. Hagman: No question as to who paid the charges, that is, the complainant paid them.

Exam. Woodrow: All right, sir, that is clear, so we will
172 proceed.

By Mr. Campbell:

Q. Mr. Backus, what is the volume—have you got a statement of the volume of business done by you over this Wyoming Railroad?

A. Yes, sir.

Q. Will you just roughly state about what the volume of business is over this line by your company?

A. From the first of January, 1918 up to September 1st, 1920, we shipped in a total of 122 cars of lumber and building material.

Q. Are there other firms doing business at Buffalo, different lines of business there?

A. Yes, sir.

Q. And is there a considerable volume of business in this same line that you are in that is done by others?

A. The lumber business?

Q. Yes, sir.

A. Yes, there is another lumber company there, the Pioneer.

Q. Is there anything else you think of that you desire to state, Mr. Backus?

A. No, sir.

By Mr. Hagman:

Q. One question, please. As far as rates are concerned, other merchants in other lines of business are in the same position you are at Buffalo?

A. Yes, sir.

173 Q. So far as to being able to do business further north?

A. Yes, sir.

Q. Your two main objections, as far as discrimination is concerned, is on account of the oil fields and the territory between Sheridan and Buffalo, as I understand?

A. Yes, sir.

Mr. Hagman: That is all.

By Exam. Woodrow:

Q. One question, sir. The Examiner understood you to say in the beginning that Arvada was a point that you allege was given

preference, and then you corrected and said Arvada was not preferred?

A. That is true.

Mr. Campbell: I think I was the one that said that.

By Exam. Woodrow:

Q. Then the points are Sheridan, Ulm, Clearmont and Caspar?
A. Yes, sir.
Q. The four points. That is all.

(Witness excused.)

Mr. Campbell: Call Mr. Heilman.

L. I. HEILMAN was thereupon called as a witness, and having been duly sworn, testified as follows:

By Mr. Campbell:

Q. Give your full name to the Stenographer.
A. L. I. Heilman.
Q. Where do you live?
A. Sheridan, Wyoming.
174 Q. How long have you lived there?
A. Since 1912.
Q. Have you any connection with the Pioneer Lumber Company?
A. Yes, sir.
Q. What position do you hold?
A. I am secretary and Treasurer.
Q. Have you yards at Buffalo?
A. Yes, sir.
Q. Have you one at Ucross?
A. Yes, sir.
Q. Did your company make the shipments as shown by the Exhibits "C" and "D" in the complaint? Were those shipments made by your company as shown in Exhibits "A," "B," "C" and "D?"
A. Do you want me to check each one of them to see?
Q. Not if you are familiar with them.
A. I checked this over before, and it is correct. These cars were all received by our company.
Q. And shipped on the dates and virtually in the manner shown there?
A. Yes, sir.
Q. Who paid the freight?
A. Pioneer Lumber Company.
Q. There are a number of these, and I presume they will be submitted under Rule 5 also?
175 Exam. Woodrow: Yes, they will be handled in accordance with the provisions of Rule 5.

By Mr. Campbell:

Q. What competition do you have to meet at Buffalo and Ucross?
A. Well, at Buffalo we meet particularly Sheridan and Clearmont competition.

By Mr. Hagman:

Q. Have you a yard at Buffalo?
A. Yes, sir.

By Mr. Campbell:

Q. And at Ucross. Will you go on and state how you are handicapped on account of these Buffalo rates, and then go on in your own way and state what is the effect on your business, your business at Buffalo and Ucross?
A. It is all a matter of price. On account of the extra cost of our material delivered at Buffalo and Ucross our prices—in order to make a fair profit—must necessarily be quite a little higher than the prices that are made by yards located on the main line of the "Q" where they have a less freight rate to pay.
Q. Now what effect does that have upon the territory in which you can sell, in and around Buffalo?
A. Very materially cuts down the radius of our freight rates.
Q. Do you feel the competition at Caspar?
A. Well, I can hardly say. That is new territory, and I don't live in Buffalo, but until this new oil strike came I don't think we did, but I imagine we will.
176 Q. And what will be the result of the blanket rate to Caspar upon an attempt to do business from Buffalo in that territory?
A. It will give them quite a little advantage on account of their lower delivered price at Caspar over what we have at Buffalo.
Mr. Campbell: I think that is all.

By Exam. Woodrow:

Q. Would it offset the 20 miles nearer that you are?
A. I am unable to say as to that, I don't think it will.
Q. You think regardless of their lower freight rate to Caspar that your position, being 20 miles nearer Kaycee, that you will still be able to compete on an equal basis?
A. No, I think not. I think you are a little mistaken in the distance. I think there is a difference of 15 miles. The oilfield is 75 miles from Caspar and 60 miles from Buffalo. The oilfield is about 10 miles south of Kaycee.

Cross-examination.

By Mr. Hagman:

Q. Have you been doing business around Kaycee and the oilfields?

A. Not in the oilfield.

Q. You do not maintain any yard at Kaycee?

A. No, sir.

Q. And what you say, then, about your inability to compete in there is your judgment as to what you will be able to do when
177 the road is finished into the oilfield; it is not based on any past experience?

A. No, because the oilfields are just new.

Q. What is the territory around Buffalo and Ucross that you claim has an advantage because of the blanket rate on the main line of the "Q"?

A. Well, all that line between those points and the main line of the railway, particularly as regards Ucross, that part of the country directly east—no, directly between that and the Burlington railroad where the town of Ulm is located. That is a distance of about six miles.

Exam. Woodrow: That would be north, wouldn't it?

Mr. Campbell: Would be northeast, I guess.

By Mr. Hagman:

Q. Well, it is the territory north of the Wyoming Railroad and south of the Burlington?

A. Yes.

Q. Somewhat of a "V" in there?

A. Yes.

Q. Now, as far as any business is concerned along that highway between Buffalo and Sheridan, your firm is not damaged in any way, or prejudiced in any way by the higher rate to Buffalo, because you supply customers from your Sheridan yard, isn't that true?

A. Have to supply some of them, yes.

Q. But it does not make any difference in your business
178 at the end of the year whether people buy from you at Sheridan or Buffalo?

A. Not if they come to us at Sheridan, but there are a good many other places at Sheridan to buy lumber from besides our yard, if they come there for their lumber.

Q. There are other places in Buffalo besides your yard?

A. One other, and there are lots of others in Sheridan, so that our chances of getting it are much less if they come to Sheridan.

Q. Now, you say it is how far from Ucross to Clearmont?

A. Ucross to Clearmont?

Q. 32 miles, did you say?

A. No, I think it is 10 miles.

Q. And do your customers at Ucross find it cheaper to buy from

you where the lumber has been hauled by rail to Ucross than to drive to Clearmont and buy it?

A. Some of them do and some do not; depends a good deal on the volume or on the quantity. If they just want a small amount they cannot afford to make the trip to Clearmont; if they want a wagon load they can ordinarily afford to go down there and haul it up cheaper than we can sell it to them at Ucross.

Q. Now, then, what is the difference in the price upon a thousand feet of lumber sold by your yard at Sheridan and at Buffalo?

179 A. Well, I cannot tell you exactly, but I would say approximately $5.00.

Q. Approximately $5.00?

A. Yes.

Q. Does that represent the difference in the additional freight you have to pay from Clearmont to Buffalo?

A. Part of it, part of the additional freight; does not take care of all the additional freight.

Q. So that this additional freight that you have to pay over the amount paid by Sheridan and other main line points is passed on to the consumer when you sell the lumber?

A. A portion of it.

Q. A portion of it?

A. Yes.

Q. But you are unable to say how much?

A. I am.

Q. The same thing is true at Ucross?

A. Yes, sir.

Q. I presume you and your concern want to see this Wyoming Railroad continue to operate into Buffalo and Ucross and you do not care to go back to the old days when you had to bring everything from the main line of the Burlington?

A. No, I don't think so.

Q. Do you think these towns like Sheridan have the right to have any better rate than a town like Buffalo, located on a branch

180 line in the interior?

A. I don't know that I have—I don't know.

Q. You think Buffalo should be put on the same basis as far as rates are concerned, as Sheridan?

A. Yes, sir.

Mr. Hagman: I think that is all.

Redirect examination.

By Mr. Campbell:

Q. Can you see any reason, Mr. Heilman, why Buffalo should not have the same rate as Sheridan, when Birds, Colorado, is given the same rate?

A. No, sir.

Q. And are you interested enough in the Wyoming Railroad that you care to continue paying an unreasonable and discriminatory

rate in order that a possibly poor railroad may exist off the people?
A. No, sir.

By Mr. Hagman:

Q. Well, now, you don't know anything about the town of Birds, and the Great Western Railroad, and how much their earnings have been, or their deficit, how much they have to charge, the competitive conditions down there and that sort of thing, do you?
A. No.
Q. You would hardly like to compare the situation with Birds unless you knew those things, would you?

181 A. Well, I don't know that it is necessary to compare that particularly, but any other town that is a good deal further away than Buffalo I can compare it with.

Q. What towns?
A. Any of the towns on the Burlington right south there that take the blanket rate.
Q. Mr. Campbell spoke of Birds because it is a town not located on the Burlington, but on another little railroad.

By Mr. Campbell:

Q. But it is a fact, is it not, that the Burlington and the other lines interested here do haul this freight many hundred miles for the same rate, and it surely must cost more to haul those many hundred miles for that rate than it would to haul it to Buffalo.

Exam. Woodrow: Many hundred miles what?
Mr. Campbell: Further than Clearmont. It must cost them a good deal more to haul those several hundred miles than it would this 25 miles to Buffalo.

A. That is the way it would appear to me.

Mr. Hagman: I object to this question for the reason that the witness has not qualified himself as a railroad man.
Mr. Campbell: It does not take a railroad man to pass on that kind of proposition. Any man in the world ought to be able to pass on that. That is self-evident.
Exam. Woodrow: It is not necessary to have argument of this character and the Examiner wishes you would develop the facts and leave the argument to appear in the proper place.

182 By Mr. Campbell:

Q. Deadwood, South Dakota, is not on the main line of the Burlington, is it?
A. I think not. I think it is on a little branch.
Q. And that is many miles further haul from Clearmont than Buffalo is?
A. Yes, sir.

Q. Mr. Heilman, can you make any statement as to the volume of business done by your company in Buffalo?

A. I can tell you the number of cars of freight received, of lumber and building material, at Buffalo, during the year 1919 and '20; up to the first of September we received 108 cars.

Q. Would a through rate no higher to Buffalo than to Clearmont increase the business, in your estimation, of the Wyoming Railroad?

A. Undoubtedly it would, yes, sir.

Mr. Griggs: One question. I think you stated in your examination that you would not care to pay an exorbitant rate to the Wyoming Railway Company even if it was necessary for the Wyoming Railway to cease business. Is that a correct statement?

A. Well, I believe that is about the way it was worded; I am not sure.

Q. If the Wyoming Railway Company were forced to cease business, what would your position be with reference to competi-
183 tive conditions in Buffalo? Would it be better or worse than at the present time?

A. Well, it might be a little worse. I expect it would.

Mr. Griggs: That is all.

By Exam. Woodrow:

Q. You have testified, sir, that you paid and bore the charges on shipments set forth in Exhibits "A," "B" and "C" attached to the complaint. Exhibit "A" deals with rates on brick and clay, and the shipments involved therein were intrastate shipments. You are seeking reparation on those shipments. The Examiner would like you to state upon what basis you desire reparation.

A. Mr. Examiner, I am not familiar enough with that point to answer you.

Mr. Campbell: Wasn't that covered by Mr. Brown's testimony?

Mr. Brown: I don't think we did cover the brick situation.

Exam. Woodrow: The Examiner is under the impression that nothing has been said as to the brick rate, and all the complainants' exhibits up to date have omitted reference to the brick rates.

Mr. Campbell: I think we will have to recall Mr. Brown, then, on the brick rates, in regard to reparation. We are not asking, of course, the Commission to fix a brick rate for the future, because they are all intrastate, but we are asking that reparation be paid on those brick shipments, but I think we will have to recall Mr.
184 Brown.

Exam. Woodrow: Any further questions of this witness?

Mr. Hagman: No, sir.

(Witness excused.)

R. S. BROWN was thereupon recalled, and having been previously sworn, testified further as follows:

Direct examination.

By Mr. Campbell:

Q. Mr. Brown, would your general testimony in regard to increase under General Order No. 28 be applicable to these brick rates?

A. Yes, sir, complainants' Exhibit No. 2, showing statement of revenue per ton mile and percentage of increase since June 24th. The complaint shows several cars of brick, but this statement only shown one shipment taken from that complaint, the statement in the complaint. Sheridan, Wyoming to Buffalo rate, based over Clearmont, the rate in effect June 25th, resulting from General Order 28, 17 cents; the factors of that rate are, 7 cents, Sheridan to Clearmont; 10 cents from Clearmont to Buffalo, making through rate of 17 cents. The rate in effect prior to June 24th was 13 cents; the factors of that 13 cent rate were 5 and 8; each factor was increased 2 cents. It is our contention that the correct reasonable rate would have been 15 cents, and we are asking for reparation of 2 cents per 100 pounds on all the brick shipments shown in the complaint.

185 By Exam. Woodrow:

Q. Well, what is the situation with respect to the fire clay shipments?

A. The rate structure is a little different, because they take class rate per hundred pounds.

Exam. Woodrow: What other shipment is that, the second shipment in Exhibit "A"?

A. Flue Linings. That is a clay product.

Q. With respect to those two shipments, fire clay and flue lining, the rate paid was 47½ cents. Now, on what basis do you request reparation be paid, in the event reparation is awarded by the Commission?

Mr. Campbell: We are simply asking on the brick, reparation on the basis of the single increase instead of the double increase.

Exam. Woodrow: The Examiner understands that, but this is just one more rate, and if he states what it would be, it will be clear.

A. I haven't got any of the rate memoranda or anything on those rates now. They were increased 25 per cent, being class rates. The flue lining and fire clay took the class rate to and from the junction point. Now, the situation would be the same in regard to reparation, that the class rates should be increased just once over the gateway, or over Clearmont. I can get those rates if you desire to know just what the factors are—I can get that later.

186 Q. The Examiner would like to have them in the record. It would be easier for the record to show that than for the Examiner to have a tariff memorandum when he gets back to the Commission.

A. I will give you that information.

Mr. Campbell: The rate is shown on the expense bill.

The Witness: On June 19th the factors on the fire clay, as charged, or in effect June 25th, were up to Clearmont, 22½ cents per 100 pounds; from Clearmont to Buffalo, 25 cents per hundred pounds. Those were the old factors, increased 25 per cent.

Mr. Campbell: I think you had better look this up later and file them with the Examiner. I think it would save time.

Exam. Woodrow: The Examiner will ask that those rates be filed. You can probably do it this afternoon—file them with Mr. Flannery and the record will be complete.

By Mr. Hagman:

Q. May I ask a question there: on the brick is there a commodity rate from Sheridan to Clearmont?

A. That is my understanding, commodity rate.

Q. And what is it on flue linings?

A. Class rate.

Q. There is a minimum class scale, is there not, fixed by the tariff?

A. Yes, sir.

Q. How does that minimum class scale compare with the
187 actual charge?

A. Why, as I remember, 22½ cents would be fourth class rate, and I believe that is higher than the minimum class scale. It is higher than the minimum class scale.

Mr. Hagman: That clears up the point I had in mind.

Mr. Campbell: That is all.

Exam. Woodrow: Complainant rests?

Mr. Campbell: Just a moment. I think that is all. Complainant rests.

Exam. Woodrow: Mr. Campbell, the Examiner notes that you have alleged violations of Sections 1, 2 and 3.

Mr. Campbell: We have introduced no evidence as to Section 2, but we will argue that the service up to Clearmont is contemporaneous, and that it is illegal to charge more per ton mile when destined to Buffalo for a haul from the point of origin and Clearmont, being contemporaneous service.

Exam. Woodrow: But you do not care to withdraw the allegation of violation of Section 2?

Mr. Campbell: No.

Exam. Woodrow: The Examiner wanted to call that fact to your attention, that you had not presented any testimony with regard to Section 2.

Mr. Campbell: The Evidence shows that the service is contemporaneous, coming into Clearmont over either one of the lines, or whichever one it comes over, and we will argue that it being
188 contemporaneous, there is a violation of Section 2, because the ton mile earnings are greater for that contemporaneous haul when destined to Buffalo than when destined to Clearmont.

Exam. Woodrow: Of course the Examiner has no comments to make as to the effect of that argument.

(Witness excused.)

C. N. BOLANDER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Hagman:

Q. State your name.
A. C. N. Bolander, Chief Clerk to the Western Traffic Manager, Great Northern Railroad.
Q. How many years have you been engaged in freight or railroad work?
A. Thirteen.

Mr. Hagman: I think, Mr. Campbell; you will admit Mr. Bolander's qualifications?
Mr. Campbell: Certainly.

By Mr. Hagman:

Q. Mr. Bolander, I wish you would give us the history of the lumber and shingle rates from the Northwest into the Wyoming territory.
A. To commence with, I might say that the producing, lumber producing territory of the Pacific Northwest is divided into
189 several groups for the purpose of making rates to Wyoming territory. There are several different groups, but the principal ones are the Coast Group and the Spokane Group. The Coast Group is supposed to cover the most of the shipping points west of the Cascade Mountains, and the Spokane Group the shipping points within the Spokane District, or in the vicinity of Spokane.

Prior to November 1st, 1907, R. H. Countiss' Tariff S. R. 662, I. C. C. 564, provided the following rates from the Coast Group to Clearmont: shingles, 60 cents; cedar lumber, 50 cents; pine lumber, 50 cents; fir lumber, 45 cents. From the Spokane Group the same tariff provided a rate of 50 cents on shingles; 40 cents on cedar lumber, 40 cents on pine and fir.

Effective November 1st, 1907, this tariff was superseded by S. R. 963, I. C. C. 850, and the rates published effective that date from the Coast Group to Clearmont were: 60 cents on shingles; 60 cents on cedar lumber and 50 cents on both fir and pine. From the Spokane Group, 51½ cents on shingles, 50 cents on Cedar lumber and 45 cents on fir and pine.

There were a number of complaints made at the time this tariff was issued, and the entire tariff was before the Interstate Commerce Commission, and during June, 1908, they issued four orders in connection with cases 1054, 1327, 1329, 1335—no, five I guess,—and 1348. These cases are all reported in volume 14 of the Interstate

Commerce Commission Reports, and they required the car-
190 riers to establish, effective October 15, 1908, the following rates: 60 cents on shingles; 50 cents on cedar lumber, and 40 cents on fir and pine from the Coast Group; from the Spokane Group the rates were made 53 on shingles, 43 on cedar lumber and 33 on fir and pine.

These rates, with the exception of the shingle rates, remained in effect up until June 25, 1918.

Sometime between 1908 and 1918 the shingle rates were reduced to the cedar lumber basis. This made the rates in effect just prior to June 25, 1918, 50 cents on shingles, 50 cents on cedar lumber and 40 cents on fir and pine from the coast group, and 43 cents on shingles, 43 cents on cedar lumber and 33 cents on fir and pine from the Spokane group.

By Exam. Woodrow:

Q. That is to the points of destination involved in this case?

A. That is to Clearmont and such points as take the same rate. These rates of course went up 5 cents per 100 pounds on June 25, 1918, and they have since been advanced 25 per cent under Ex parte 74.

By Mr. Hagman:

Q. Now, Mr. Bolander, the rates which the complainants paid in this case on shipments which moved after General Order 28 became effective, and before Ex parte 74 increase, were the rates established by the Interstate Commerce Commission in these five cases you mentioned?

A. Yes, sir.

191 Q. Increased under General Order 28?

A. Yes, sir.

Q. Now, I wish you would state—first, this rate as established, was blanketed at both ends, was it not?

A. Yes, to a considerable extent.

Q. As established after the five decisions of the Interstate Commerce Commission?

A. Yes. It was blanketed prior to their decisions and after their decisions.

Q. And those blankets have been maintained since that time?

A. Since that time.

By Exam. Woodrow:

Q. Those rates were increased by General Order No. 28 five cents?

A. Yes, sir.

By Mr. Hagman:

Q. I wish you would just give us a general idea as to the extent of the blanket on the west end and also on the Wyoming,—Colorado—Nebraska end.

A. The Coast Group rate territory includes the territory from Vancouver, British Columbia south to—I don't know just how far south of Portland—a distance of approximately 350 or 400 miles, and east and west it extends from practically the Pacific Ocean to, with a few exceptions where arbitraries are carried, to the Cascade Mountains; and the territory immediately east of the Cascade Mountains is on a basis that is lower than the Coast Group rate and a little higher than the Spokane Group rate. With respect to the Great
192 Northern, this intermediate territory includes Leavenworth and other points in that vicinity; and the Spokane rate group includes from Spokane and certain stations north and east thereof. The originating points on the other lines are of course in the same territory, the same general territory.

With respect to the destination points the blanket extends down south I think as far as Denver and Alliance, covers a considerable territory on the C. B. & Q. south of Billings.

Q. Now, just for example, on June 25th, what was the lumber rate from the Spokane territory to Billings?

A. I haven't got it here, but I think it was about a cent or two lower than——

Q. I wish you would check it and see if it was 37 cents.

A. Well, the rate via the Great Northern was 38 cents, but I believe the Northern Pacific was a cent or two lower. Then the Short Line I think have a lower rate than the Great Northern.

Q. That is, to Billings?

A. To Billings; but it is not over two or three cents difference in the rates.

Q. Well, what is the Great Northern Rate, then, to a point on the "Q" just south of Billings?

A. That would be 38 cents.

Q. The same as to Billings?

A. Yes, via the Great Northern.

193 Q. Well, this blanket that existed then, on the eastern end has been maintained since it was established after these decisions of the Interstate Commerce Commission?

A. Yes, it has been continued continuously since the rates were established by the Interstate Commerce Commission in 1908.

Q. Now, what have you to say as to whether the rate you have testified to up to Billings and also up to Clearmont is a reasonable rate?

A. I think the Interstate Commerce Commission found that the rates to those points were reasonable when they rendered their decisions. I have one statement prepared here showing rates from various points in the Pacific Northwest to distances corresponding with distances over which some of the shipments to Buffalo moved. I took the distances from points of origin on the Great Northern Railway. There were shipments moved from Libby, Bonners Ferry, Priest River and Albany Falls, on the Great Northern. I took the distances from those points to Clearmont and compared them with rates to other points on the Great Northern in North Dakota and Montana corresponding to the distances to Clearmont.

Q. The statement which you have just referred to is the Exhibit which we have marked "Defendants' Exhibit No. 1" for identification?

A. Yes.

194 Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 1, Witness Bolander," and is forwarded herewith.)

By Mr. Hagman:

Q. Just continue, Mr. Bolander. Do you have some comments to make upon this exhibit?

A. I might say in connection with the rates shown in the second section, that is, the rate from Libby, Montana, to Mondak, Montana, a distance of 659 miles, the rate as shown there on fir and pine lumber is 35 cents for 659 miles, or as compared with rate of 38 cents on fir or pine lumber from Libby to Clearmont, Wyoming, a distance of 784 miles. The local Montana rates including the rate from Libby to Mondak, are the result of rates which were ordered by the Railway Commission of Montana, and appear quite favorable with the rate to Clearmont, which was ordered by the Interstate Commerce Commission. It was during 1913 that the Montana Commission set the rates from the lumber district in Northwestern Montana to practically all stations in the State.

Q. Have you anything further on the subject of the reasonableness of the rate up to Billings and Clearmont?

A. I might call attention to the first item in the third section of the statement—well, the second item: the rate from Seattle, Washington to Concord, Montana, is 40 cents, for a distance of
195 783 miles, on fir and pine, as compared with 38 cents, rate for 784 miles, Libby to Clearmont.

Q. Can you explain the reason for blanketing that rate south of Billings?

A. I believe another witness will testify further in connection with the blanket, but of course I think it is admitted by all railroad employees that have anything to do with the making of lumber rates, that the favorable rate is influenced somewhat by California competition, on account of the distance being so much shorter.

By Exam. Woodrow:

Q. Are the rates from Montana blanketed? Concord is in Montana, the point that you referred to?

A. It is, yes, sir.

Q. Montana rates, then, are not blanketed?

A. Well, no, the rates are on a grade until you get to the eastern part of the State, or in North Dakota, when there is a considerable blanket until you get to St. Paul. That has influenced to a certain extent the rates in that territory by competitive conditions, different routes.

Q. This Exhibit compares blanket rate to Clearmont with the graded rates from Montana?

A. Yes.

Q. Proceed.

Mr. Hagman: I have here an extract from the testimony of Mr. Hastings in the Wilbur Lumber Company Case, I. C. C.
196 Docket 11224, which I am offering in evidence.

Mr. Campbell, do you consent that this testimony may go in and have the same force and effect as though Mr. Hastings were here personally?

Mr. Campbell: It is the same testimony as offered yesterday?

Mr. Hagman: Yes, subject to your right to object to the relevancy or the competency.

Mr. Campbell: I would like to have objection entered now as to its being incompetent, irrelevant and immaterial.

Exam. Woodrow: It will be received.

Mr. Hagman: This relates to the interpretation of General Order No. 28.

Exam. Woodrow: It will be designated Defendants' Exhibit No. 2.

(The testimony was received in evidence, thereupon marked "Defendants' Exhibit No. 2, Witness Bolander," and is forwarded herewith.)

By Mr. Hagman:

Q. For the purpose of making this record complete with reference to the complaint against the double increase I wish you would repeat what you said yesterday with reference to the receipt of Rate Authority No. 10, and so forth.

Mr. Campbell: Might save time if we asked the Stenographer to copy from the other record what he stated yesterday. I would be willing that that should be done if the Examiner would.
197 Mr. Hagman: That is satisfactory to me.

Exam. Woodrow: It is not very long and there might be some question. The Commission does not like to stipulate from one record to the other.

A. About the date of receipt, et cetera?

By Mr. Hagman:

Q. Yes.

A. I believe it was stated by some of the complainant's witnesses that this freight rate authority was issued on July 2nd, but the copy that was received in Western Traffic Manager's office of the Great Northern Railway is dated at Chicago, July 26, 1918, and was received on July 30th, and I believe I also stated that there was considerable time consumed in issuing tariffs that would properly take care of the changes that were required in this Freight Rate Authority 10. We construed the original Order No. 28 as having the effect of increasing each factor where combination rates were applied on

any shipment and the charges were collected on that basis until tariffs were amended, and Mr. Kelly's Tariff 228 was issued sometime afterwards.

Q. Have you an extract of Mr. Hastings' testimony which has been put in evidence in this case?

A. Yes, sir.

Q. Was there any joint through rate from the Northwest to
198 Buffalo over any other railroad existing at the same time the complainants paid this combination of locals?

A. There was no joint through rate to Buffalo from the Northwest at all via any route.

Q. The defendants in this case have taken the position that they are unwilling to extend that blanket to Buffalo. Now, I wish you would state the reasons for that.

A. It has not been the policy of the transcontinental carriers for a number of years to extend their transcontinental lumber rates to and from short lines unless forced to do so by competitive conditions. I guess Mr. Mount testified in another case yesterday, calling attention to the fact that there are now several other cases before the Commission in which short line carriers or mills located on short lines are endeavoring to obtain the establishment of joint rates by making the trunk line absorb such charge as the short line would make up to the junction.

There was considerable testimony given yesterday afternoon by Mr. Brown with respect to the joint rates carried on lumber to Birds, Colorado, a point located on the Great Western Railway, and according to his blueprint, Exhibit No. 3, the Great Western Railway is shown as being a short line extending from Loveland to Birds.

In order that there may be no misunderstanding on the part of the Examiner, I would like to say that the Great Western
199 Railway extends from Longmont, Colorado, to Eaton, Colorado. Longmont, the station on one end of the line, is served by the C. B. & Q., while Eaton, a station on the other end of the line, is served by the Union Pacific System. As a consequence, if there were no joint through rates, the C. B. & Q. would be unable to handle any business going to stations in the vicinity of Eaton and the Union Pacific would be unable to handle any traffic in to stations in the vicinity of Longmont.

By Exam. Woodrow:

Q. Will you point those points out to the Examiner on this map?

A. I think I can. (Witness conferring with Examiner). Here is Longmont (indicating).

Q. South of Birds?

A. Yes, on the C. B. & Q. Here is Eaton. This line here (indicating) is the Union Pacific; comes down from their main line through Cheyenne.

Q. Make that so the record will show where Eaton is. Windsor and Eaton are in a Northeasterly direction from Birds, is that correct?

A. Yes, sir.
Q. Proceed.

By Mr. Hagman:

Q. I understand the point you make is that since the Union Pacific maintains a joint rate into Birds, on the Great Western, it is necessary for the C. B. & Q. and the other routes to maintain
200 the same rate to get a line haul on this business?

A. No, I would not put it that way, no, but when we have a short line connecting with two trunk lines, and the connections with the trunk lines are on each end of the short line, why, in order that both of the trunk lines may be on equality at all of the stations on the short line, it is necessary to blanket the entire line, and the carriers are forced to absorb a considerable revenue that they do not like to do.

Q. Do you think the situation at Birds, on the Great Western Railway is similar to Buffalo on the Wyoming Railway?

A. It is not similar in any way, because the Wyoming Railroad is not served by—does not connect with any carrier other than the Chicago, Burlington and Quincy.

Q. Do you think that, in determining whether or not it is reasonable to extend that blanket rate, any factor besides distance should be taken into consideration?

A. Yes, sir, competitive conditions are a very large factor in the making of rates.

Q. Can that blanket rate be extended 28½ miles on the Wyoming Railway for the same reasons that it would be extended 28½ miles on the Burlington Railroad?

A. No, it could not.

Q. For what reason?

A. Well, because it does not look reasonable that the Wyoming Railroad could afford to handle traffic for 28 miles on their
201 line for the same charge as the Burlington would handle it on their main line, where they are handling a great deal more business than the Wyoming Railroad can handle. Another reason would be that if the rate were extended for 28 miles on the Burlington they would get the entire revenue, whereas when you have to split it between two or more lines, each one has to get more than the total through charge—that is, each one would have to get a greater per ton mile earning, and that is at an additional expense.

Q. Does the fact that a two-line haul would result have anything to do with it?

A. It is generally customary to make higher rates on two-line hauls than on one-line hauls unless there are peculiar conditions which force rates on a different basis.

Q. In your opinion as a traffic man, do you consider that the present rate maintained to Clearmont is in and of itself a reasonable rate?

A. I believe it is.

Mr. Hagman: I believe that is all.

The Witness: I would like to make a further statement, if you do not mind. There was considerable testimony given yesterday afternoon by Mr. Brown with respect to this blanket territory extending from Billings to Denver, Edgemont, Deadwood and Loveland, and in case the Examiner should get the impression that all of this territory takes this blanket rate, I would like to refer him to
202 rates which were in effect immediately after June 25, 1918 to Lander, Wyoming, a point in Wyoming on the Northwestern Railroad. The Coast group rates to Lander are 65 cents on shingles, 65 cents on cedar lumber and 55 cents on pine and fir. The Spokane rates are 58 cents on shingles and cedar lumber and 48 cents cents on fir. Tariff reference for the rates given is R. H. Countiss' Tariff No. 18-C, I. C. C. No. 1058. What is true of the rates to Lander is also true as to various other points in Wyoming and Western Nebraska, which take rates higher than this blanket rate which has been referred to.

Exam. Woodrow: And a similar complaint might be brought with respect to traffic at Lander, as this complaint?

A. The distance is a little further to Lander than it is to Buffalo, but it certainly cannot be as far as the distance to some of the points which were referred to yesterday.

Cross-examination.

By Mr. Campbell:

Q. Mr. Bolander, I understood you to say that you thought the rate from Libby, Montana, to Clearmont was a reasonable rate in and of itself?

A. I think so.

Q. What elements do you take into consideration in determining that this rate is a reasonable rate in and of itself?

A. A great many things to take into consideration. I think the rate from Clearmont from Libby would even be higher than it is today, were it not for the situation at Denver and points in
203 that vicinity which requires a large blanket, and they would be graded up somewhat similar to the rates to Montana destinations.

Q. Was this one of the rates fixed by the Commission?

A. Yes, sir.

Q. Then you determine that because it was fixed by the Commission it was a reasonable rate?

A. Well, the carriers wanted to get rates that were materially higher than that rate, and they considered that they were reasonable at the time they were established, and this if anything, was less than reasonable.

Q. Less than reasonable?

A. Less than reasonable.

Q. Now, in the movement from Libby to Clearmont that goes over how many lines?

A. Libby to Clearmont goes over two lines.

Q. Doesn't it go over the Northern Pcific from Laurel to Billings?
A. We deliver freight traffic direct to the C. B. & Q. I cannot testify as to whether we operate over tracks that might be owned by the Northern Pacific.
Q. Now, what is the distance from Libby to Billings? It is shown as 784.2 miles, is it not?
A. Libby to Clearmont is 784 miles.
204 Q. I meant Clearmont—did I say Billings?
A. Yes.
Q. I mean Clearmont. What proportion of that distance is over the Great Northern Railroad?
A. The distance from Libby to Billings is 602.9; from Billings to Clearmont is 181.3.
Q. Now, what proportion of that rate does the Great Northern get?
A. I do not recall. I did not look up the divisions.
Q. So you do not know, then, what per ton mile earnings the Great Northern gets upon that traffic?
A. This statement shows the per ton mile earnings of the two lines jointly.
Q. But does not for the Great Northern?
A. No, sir.
Q. Now, then, the rate from Libby of 38 cents (which is now 47½) is blanketed to Birds, Colorado, is it not?
A. It is. No, I beg pardon—some of those points that were testified to yesterdayI note that they were blanketed from the Coast, but there are some of them that take a higher rate from the Spokane territory—Spearfish and Deadwood.
Q. But they take two cents higher, and this rate is blanketed to Birds, Colorado.

Exam. Woodrow: Let the record show whether you are speaking about the present rate or the rate subsequent to June 25th,
205 47½ cents.
Mr. Campbell: 47½ cents, as effective now, since August 25th. 38 cents was the rate in effect on August 25, 1920, but before that, before August 26th, they were blanketed also to Birds, Colorado?
A. I assume so, the tariff will show.

By Mr. Campbell:

Q. Now, if you had taken the haul from Libby to Birds, Colorado, your per ton mile earnings would have been how much?
A. It would have been less than to Clearmont.
Q. Very much less, would it not?
A. It would be some—it would be more if you take a point north of Clearmont.
Q. I am taking the rates you have taken, Libby to Clearmont. Now, that rate is blanketed to Birds, Colorado, and if you had used that mileage you would have had a very low ton mile earning, would you not?

A. It would have been lower than to Clearmont.

Q. Now, then, what would you say as to the reasonableness of that rate?

A. Of the rate from Libby to Birds, Colorado?

Q. Is it or is it not reasonable in and of itself?

A. I consider that it is not reasonable in and of itself, on account of its being lower than normal, due to the competitive situation.

206 Q. Now, the haul from Libby to Birds, Colorado, goes over the Great Northern, the C. B. & Q and the Great Western Railway—three lines, does it not?

A. Yes, sir.

Q. What are the divisions of the Great Northern Railway of that rate?

A. What are the divisions? You mean the divisions that are allowed the Great Western Railway?

Q. No, the Great Northern.

A. I don't understand your question.

Q. How much of that rate does the Great Northern get, how much does the C. B. & Q. get and how much does the Great Western get?

A. I don't know what the divisions are.

Mr. Campbell: I would like to ask that those be supplied; also that the divisions between the Northern Pacific and the C. B. & Q. to Clearmont, Spearfish and Deadwood and to Edgemont, so that a similar computation as to the reasonableness of these rates can be made.

Exam. Woodrow: Any objection to filing those divisions with the Commission?

Mr. Hagman: I don't think it is material. The question is here, What is a reasonable through rate. What the divisions may be between carriers cannot have any bearing on the question, so we object to furnishing this statement or to any further questions along

207 that line.

Mr. Campbell: This is a blanket territory, and that traffic also goes over the same lines.

Exam. Woodrow: The Examiner will have to confess that he does not see the pertinency of this line of questioning. The fact that it is a blanketed territory would show that the divisions would not be of value without you had the average division to the blanket and the average earnings obtained by each carrier for an average haul in the blanket and to request that the defendants furnish such an exhibit would entail a great deal of work, and the Examiner would prefer that you withdraw your request.

Mr. Campbell: I will not withdraw the request, for this reason; not only in this case, but in every other case these railroads come in and make assertions that rates are or not reasonable in and of themselves. They are not required to anlayze a rate. Now, this witness has brought forth here an exhibit in which he claims that an earning of $.0121 per ton mile is a reasonable rate in and of it-

self, when the testimony shows that that very rate is carried volunarily by them some 600 miles further. Now, either one of two things is true—either one of those rates is reasonable and the other is unreasonable, and if that unreasonable rate is maintained, it is casting a burden upon other traffic, and I think that the time has come in these rate matters when these carriers must show
208 what a reasonable rate is. Especially is that true as the law now stands. It is a different proposition now, because the Commission now has a right to fix a minimum rate, and they have the right in these cases to say that if this rate to Birds, Colorado is less than reasonable, that this carrier must cease maintaining that rate. And I say that now it is pertinent here because the Great Northern, the C. B. & Q. and Great Western—three lines—have a joint rate no higher than to Clearmont although the distance is several hundred miles further and then they object to extending that rate 25 miles on the ground of reasonableness. I think it is very pertinent.

Mr. Hagman: May I ask one or two questions of Mr. Bolander before I say anything further on this? I think it may be of some assistance.

Exam. Woodrow: You may.

By Mr. Hagman:

Q. I understood you to say, Mr. Bolander, that you thought the rate to Birds, Colorado, was in and of itself a less than reasonable rate, is that correct?

A. Yes, sir.

Q. Did you mean by that it was unreasonable under all the competitive and other conditions that exist for these railroad companies to maintain such a joint rate to Birds?

A. Maybe the word unreasonable was not properly used. I should perhaps describe it as abnormal or a sub-normal rate. It is lower than it would be were there no competitive conditions to make
209 the present rate necessary.

Q. Now, in view of the record here the way it stands, I want to renew my objection, for this reason: the complainant is asking for a joint through rate to Buffalo which shall be reasonable. That is the only question here involved, and what the divisions in any of these joint rates may be, is a matter strictly between the carriers themselves, and has no bearing on what a reasonable joint rate would be, and I think the Commission has so held.

Exam. Woodrow: It appears to the Examiner that complainants' objections are of such a general character that they go to the objection to any blanket rate

Mr. Campbell: No, it goes to this: here is a general blanket territory; here is a discriminatory rate, as we claim, maintained in that general blanket territory. Now, then, I think if the evidence were produced that you would find that these carriers could give to the Wyoming Railroad the entire amount of their local and still earn more money on that traffic to Buffalo than they now earn to Birds, Colorado.

Mr. Hagman: After we hear from the Wyoming Railroad, I think you will retract that statement.

Mr. Campbell: The Wyoming Railroad come in here and say that they have requested the joint rate.

Mr. Hagman: There is an explanation for that, too.

Mr. Campbell: And I assume that your answer means
210 what it says, that they would like to have a joint through rate.

Exam. Woodrow: The Examiner regrets that complainant is still insisting upon this information being furnished, but in view of the labor involved in compiling a statement of that character that would really be of value, he will have to rule that it will not be necessary to furnish that statement.

Mr. Campbell: There could not be much labor involved. All I ask for is the division on the rate from Libby to Clearmont between the Great Northern and the C. B. & Q.; the division between the Great Northern, the C. B. & Q. and the Great Western from Libby to Birds, Colorado. Now, there is no labor about that. I haven't any doubt that Mr. Bolander could tell that in three minutes' time if he was in his office—the Colorado & Southern; there are four lines there; I thought there were but three, but from Libby it would pass over the Great Northern to Laurel, the C. B. & Q. would take it to Wendover, and the Colorado & Southern to Loveland, and beyond the Great Western from Loveland to Birds.

Exam. Woodrow: What good would that information do you, Mr. Campbell, if the Commission would decide that the Clearmont rate should be extended to Buffalo?

Mr. Campbell: None at all. It would not do me any good. I think it would aid the Commission very much in arriving at that, and then the Commission has held this too, that if the Wyoming Railroad, the C. B. & Q., the Great Northern and Northern
211 Pacific cannot agree upon divisions, that they may then fix the divisions. Now, that is the law as it now stands, and I think these divisions would be very helpful for that purpose, because the chances are they will not agree. That is undoubtedly the reason why there has not been a through rate up to the present time.

Mr. Hagman: That is the only time the question of divisions is material, is when the carriers ask the Commission to fix them.

Exam. Woodrow: Since the carriers still object to furnishing this information, and since the Examiner fails to see the pertinency of it, he will have to rule that this information will not be required to be furnished.

By Mr. Campbell:

Q. Mr. Bolander, this Coast rate, which is shown by the Exhibits of the Complainants, as from Seattle, is blanketed, and extends from Bellingham, does it not?

A. I think it goes to Vancouver, British Columbia.

Q. Yes, and that rate from Vancouver is blanketed to Birds, Colorado?

A. Yes.

Q. Now, is that rate reasonable in and of itself or unreasonable?

A. Well, the same situation prevails with respect to the rates from the Coast group as applies from the Spokane group.

212 Q. So that in your Exhibit you have taken a distance which corresponds with the distance in this complaint, for comparison only, and you have omitted the long distances in those blankets, isn't that true?

A. No. I simply obtained the distances from the points covered by the complaint, and then I took those exact points and made my second set of comparisons. Then I thought, just as a little further explanation, I would take a representative point in the Coast group, and Seattle was the largest point that I thought of, and I put it in, but I could have picked a more easterly point; I could have picked a more distant point.

Q. Your Exhibit, then, to be of value to this Commission, would have to show an average of all the distances in the blanket territory, wouldn't it?

A. It is just to show that the rate from Libby, Bonners Ferry, Priest River and Albany Falls to Clearmont is not unreasonably high as compared with other rates provided in the tariffs. I could find a good many more rates higher, and I presume I could find rates that were lower.

Q. But if it was compared with the more distant points in these blankets, both of origin and destination, it would appear to be unreasonable by that comparison, would it not?

A. If I had picked a more easterly point the comparison would have been more favorable.

213 Mr. Hagman: Do you contend that your rate to Birds should be graded back to Clearmont?

Mr. Campbell: I am not contending that, no, sir; I am contending that in this general blanket Buffalo should be included.

By Mr. Campbell:

Q. Now, in this decision of the commission on lumber rates, the rates were fixed as reasonable from certain points to certain other points?

A. I believe the originating groups were designated in one of the opinions.

Q. But the destination groups were not?

A. Well, it is very evident from the figures, from the rates which I read to Clearmont, that the rates were ordered by the Commission because of the tariff which became effective on November 1, 1907, provided from the Coast, rates of 60 cents on shingles and cedar lumber, and 50 cents on fir lumber. After these orders came out, as a result of those orders and in compliance with the orders, we were obliged to make the rates 50 cents on cedar lumber and 40 cents on fir and pine, being as it was a ten cent reduction from the rates which we had attempted to establish.

Q. But the blanket feature was very largely a matter voluntarily carried out by the carriers, was it not?

A. The blanket applied prior to the hearings.

214 Q. The blanket was not ordered by the Commission?
A. Well, in a way it was, and in a way it was not. The Commission did not specifically say "Here is Birds, Colorado, and here is Billings, Montana; publish a rate of so and so to all stations between those points." But they said that you have to restore the rates that have been in effect prior to the increase.
Q. And prior to that decision this territory in controversy was pretty generally a blanket territory, was it not?

Exam. Woodrow: The territory of destination?
Mr. Campbell: Yes.
A. Yes.

By Mr. Campbell:

Q. And you carried out after the decision of the Commission, this order by maintaining and keeping that general blanket territory?
A. Yes, sir.

Mr. Campbell: I think that is all.
Exam. Woodrow: Any further questions, Mr. Hagman, of Mr. Bolander?
Mr. Hagman: No.

(Witness excused.)

L. R. CAPRON was thereupon called as a witness, and having been duly sworn, testified as follows:

215 Direct examination.

By Mr. Hagman:

Q. State your name, please.
A. L. R. Capron, Assistant General Freight Agent, Northern Pacific Railway.
Q. How many years' experience have you had in traffic matters?
A. Seventeen.
Q. I think you have some explanation that you would like to make with reference to the reasons for blanketing the rates just referred to by Mr. Campbell is his questions.
A. Yes. An examination of the transcontinental lumber tariffs involved in this proceeding will show that while there is a great deal of blanketing, that blanket is not general. Down through Kansas, Nebraska, Oklahoma,—lots of that territory,—you will find the rates graded. This so-called blanketing is largely, if not almost wholly the result of the long lines meeting short line competition. Testimony has already been given here to the effect that this blanket we have just been speaking of, is the result of the C. B. & Q. and the Northern Pacific meeting the rates at Denver fixed by the Harriman Lines. The same proposition at the Missouri River; St. Paul lines making rates through the lower Missouri River gateways up to the

northern territory; not always exactly the same rate, but they were compelled to lower their rate in order to compete to some extent. Not wishing to grade back, they blanketed those rates.

As I said before, the blanketing, while in a sense voluntary,
216 was, as a matter of fact, the original result of competition between carriers, and not because there was any general theory adopted of blanketing these lumber rates at points of destination.

Q. Do you believe, Mr. Capron, that the blanketing of that rate into Birds, on the Great Western Railway, is a reason for blanketing the rate into Buffalo, on the Wyoming Railroad?

A. I do not know anything about the situation at either Birds or Buffalo, but from testimony that I have heard here, I should say not.

Q. Because of the difference in the competitive situation, or what?

A. Yes. As it has been described here, the application of that rate at Birds is the result of the C. B. & Q., in connection with the Great Western Railway, meeting a rate of the Union Pacific from a point just beyond on the Great Western Road, and of course they would have to apply that at intermediate points.

Q. Would the rate required——

A. I want to emphasize again that in that respect I am just speaking from what I have heard in this testimony.

Q. Now, as a traffic man, I want to ask you this question: would a rate necessarily required by the short line be a factor in determining whether or not you could extend that blanket to points on the short line?

217 A. Certainly is a factor.

Q. So that without knowing what rate the Wyoming Railway company needs, and what rate the Great Western needs, could one compare those two situations, as to whether or not the blanket should be extended?

A. Well, aside from the question of their individual needs, I don't think the thing can be compared.

Q. My question is, has that any bearing on the solution of the question, their individual needs?

A. My personal opinion is that it has not.

Q. For instance, if the evidence showed that the Wyoming Railroad actually required a 20 cent rate on lumber for 28 miles, because of their operating conditions and other conditions, and the Great Western was more prosperous and favorably situated, and required only half that amount would that have any bearing on the question?

A. It might have some bearing on the question of what arbitrary you would add to the main line rate, if both roads were similarly situated; it would not be determinative in any way whether or not the blanket rate should be extended.

Q. In one case the Burlington would take considerably less than they would in the other?

A. If they were forced, yes.

Q. Is there any limit as to the amount that a main line can shrink its revenue in order to establish a joint rate?

218 A. The answer to that is obvious.

Mr. Hagman: That is all:

Cross-examination.

By Mr. Campbell: .

Q. You claim the right of carriers to blanket rates even to the point of going below a reasonable rate, to meet competitive conditions, rail competitive conditions?

A. Yes, sir, providing that they do not accept an unremunerative rate.

Q. And you maintain that that is true now under the present law as it stands, the same as at or prior to the Esch-Cummins Bill?

A. Yes, sir.

Mr. Hagman: I object to Mr. Campbell arguing law points with the witness.

Mr. Campbell: He has qualified himself as an expert.

Mr. Hagman: Not as a lawyer.

The Witness: I did not qualify myself as an expert. I said I had seventeen years' experience.

Mr. Campbell: I think you are right when you say you did not qualify as an expert. I don't think there is any such animal. Now, Mr. Capron, you say that this territory is not a general blanket territory. Can you name any points between Spokane and Edgmont and Laurel and Loveland that are not blanketed?

219 A. I did not say that it was not today a general blanket territory. Now, I think that is as far as I could go. If you read over what I said I think it will be clear to you. I was explaining how the blanket had resulted.

Q. You do not claim, then, that this territory in controversy is not a general blanket territory?

A. No, sir, I simply claim that if it is a blanket territory it is the result of these lines meeting a rate at Denver which was fixed by another system.

Q. Now, what competitive conditions are there at Deadwood and Spearfish, South Dakota, that would require the blanketing of the Clearmont rate at those points?

A. I will ask the witness for the C. B. & Q. who appears, to answer that question.

Q. Are there any other lines, do you know, reaching those points but the C. B. & Q.?

A. I think those points are in the Black Hills District, and other lines reach the Black Hills.

Mr. Campbell: I think that is all.

Exam. Woodrow: Any further questions?

Mr. Hagman: That is all.

(Witness excused.)

Exam. Woodrow: Mr. Hagman, proceed with your next witness.

G. A. HOFFELDER was thereupon called as a witness, and
220 having been duly sworn, testified as follows:

Direct examination.

By Mr. Hagman:

Q. State your name, please.
A. My name is G. A. Hoffelder.
Q. You are employed by the C. B. & Q. Railroad Company at Chicago?
A. Yes, sir.
Q. Representing the Traffic Department?
A. I am Chief Clerk for what we term the Commerce Department of the Burlington.
Q. Please state very briefly what experience you have had.
A. I have been connected with the Burlington for fourteen years in various capacities, all in the Traffic Department.

Mr. Campbell: We do not need to take up time. We will admit his qualifications.

By Mr. Hagman:

Q. All right. Reparation is asked in this complaint on shipments of brick from Sheridan to Buffalo, I believe?
A. Yes. In connection with that I want to present a little exhibit here, in substantiation of the rates that were charged from Sheridan and Clearmont on the brick.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 3, Witness Hoffelder," and is forwarded herewith.)

The Witness: You will note that the distance from Sheri-
221 dan, Wyoming, to Clearmont, Wyoming is 38 miles. In this exhibit I have shown, as compared with the seven cent rate charged from Sheridan to Clearmont, rates on brick as from Sheridan to other points on the same line in Wyoming and Montana, ranging in distance from 5 to 28 miles. It will be noted that the seven cent rate to Clearmont is not out of line with the rates applicable to other points.

I have also shown in the same exhibit, rates from Lovell and Worland, Wyoming, which points are located on what is called our Bighorn Basin Line, that lies west of the Sheridan Division.

Q. Before you go any further, I wish you would state what rate you are speaking of now, that is, the rate applicable at what time?
A. These are the rates that became effective June 25, 1918, and I show the rate of seven cents from Sheridan to Clearmont, which was charged on the brick, and the rates that I compare with the seven cent rate were rates that were contemporaneously in effect. This statement does not show the Ex parte 74 increases.

Now, from Lovell and Worland I have shown rates to stations in Wyoming ranging in distance from three to fifty-four miles, and again it will be noted that the rate from Sheridan to Clearmont is not out of line with those applying from Lovell and Worland.

I also show the rate that was applicable from Billings to
222 Hardin, Montana, a distance of 58 miles, to which point the rate was eight cents, or one cent higher than that to Clearmont.

I want to state that in my mind these comparisons prove conclusively that the seven cent rate, Sheridan to Clearmont, was not an unreasonably high rate.

That is all I have to say about the brick situation.

Q. Now, I believe you had something that you wanted to say with reference to the reasons for extending that blanket rate to Birds, on the Great Western?

A. In the first place, I could not just "dope out" in my own mind why he picked Birds. There is nothing ever moves there. It is a prepaid station. But nevertheless there is a great reason why we have that rate blanketed to the Great Western Railway point. Now, Mr. Bolander has said to you about all I wanted to say, so I won't repeat it, but I want to elaborate a little bit on his testimony.

The Great Western Railway is not a straight line, running from Longmont or Loveland to Birds, as contemplated on the complainants' Exhibit No. 3. In reality the road operates 86 miles of track, and it has two connections with the Union Pacific, one at Eaton and the other at Kelim. It also has two connections with the Colorado & Southern, one at Loveland and one at Windsor. Then it has connection with the C. B. & Q. at Longmont.

Now, the rate from Denver, of course, as has been said, was
223 made by the Union Pacific in the Northwestern Lumber Cases. That was in 1908. At that time the C. B. & Q. Line, what we call our Bighorn Basin Line, was not built. It was only built down as far as Thermopolis, and we built it from Thermopolis down to Wendover, where we connect with the Colorado & Southern, I think we finished that line in 1915. So at that time, or before 1915, we did not have that Bighorn Basin Line. Consequently, for us to compete at Denver with the Union Pacific, and in that prosperous territory around Denver, we had to haul it over our so-called Sheridan Division, which made the movement down to Alliance and into Denver, that way, instead of via our Casper division, and the Colorado & Southern via Wendover. Therefore we had to extend the blanket rate of 38 cents from Spokane, which in reality is the Denver rate fixed by the Commission—we had to extend that along that Sheridan Division Line. That created a Fourth Section Violation. Now, talking about this Great Western Railway as a matter of competition which forced us to extend the blanket rate on the Great Western Railway, that actually did not exist at Buffalo.

By Exam. Woodrow:

Q. And that rate was extended before you completed the Wendover Line?

A. Oh, yes, yes. Now, Loveland, Colorado is intermediate to Denver on The Colorado & Southern Railroad. Birds is intermediate to Loveland on the Great Western. Consequently we could not very well carry anything higher at Birds than applicable at Love-
224 land, and in addition, the Great Western Railroad has connection with the Union Pacific at Eaton, and the Colorado & Southern, which intersects them at various points.

This situation is entirely different than that obtaining with the Wyoming Railway.

That is about all I have to say, Mr. Hagman.

Mr. Hagman: Have you any questions, Mr. Campbell?

Cross-examination.

By Mr. Campbell:

Q. Did I understand you to say that rate was fixed as a reasonable rate from Spokane to Denver, of 38 cents?

A. No, I possibly gave that impression. I meant to say that the rate from the Coast was fixed—I will correct that statement and say that the Coast rate to Denver was fixed at 40 cents by the Harriman lines. Then the Spokane rates were made a differential of seven cents under.

Q. Was that established by the Commission as a reasonable rate?

A. It is my understanding it was.

Q. Now, then, if that is a reasonable rate, then all of these intermediate points have got the same rate, not because the rate to the intermediate points was reasonable, but in order to avoid Fourth Section violation, is that right?

A. They could not very well charge more intermediate.

Q. No, but if the rate to Denver is reasonable doesn't it
225 follow that the rate to intermediate points is unreasonable in and of itself?

A. Not altogether. I would not say that, Mr. Campbell.

Q. Now, what competitive conditions are there at Wendover which would require you to establish the Clearmont rate at Wendover, other than fourth Section violations? Are there any?

A. Well, I don't know of anything other than Fourth Section violation.

Q. Then what competitive conditions, other than Fourth Section violation, are there at Edgmont which would require you to establish that rate?

A. I don't know of any.

Q. Now, what competitive conditions are there at Spearfish, where there are no Fourth Section violations, to require you to blanket that rate?

A. We do not charge the same rate; the rate is higher.

Q. Not from Seattle, it is not is it, to Spearfish than it is to Clearmont? It is from Spokane.

A. Well, of course the Chicago, Milwaukee & St. Paul operate in that territory.

Q. Well, do they operate—they don't reach those points, do they?

A. Deadwood?

Q. Spearfish.

226 A. They reach Deadwood, not Spearfish; that is a local point.

Q. Now, you recognize competition between carriers for the purpose of making a blanket rate. Do you think that is a justification?

A. I think so, yes.

Q. But in doing that you disregard competition of communities?

A. We do not disregard competition between communities on our own line, that I know of.

Q. But on Branch lines?

A. On branch lines, that is entirely different.

Q. That is entirely different. You do maintain a blanket rate frequently, on account of rail competition—you have just said so?

A. Oh, yes, yes.

Q. But you disregard the competition of communities on those lines, even though it may cause discrimination between communities. You claim that right?

A. I do not quite get your meaning, Mr. Campbell.

Q. If there was rail competition at Buffalo, there would have been a joint through rate in all probability, would there not?

A. I suppose so.

Q. And you would have recognized that competition as justification for the establishment of such a joint rate—if there had been railroad competition at Buffalo?

A. If there had been rail competition at Buffalo and we
227 were forced to meet it, and if it was lucrative business, and if the rates were not unremunerative.

Q. Now, then, there is community and commercial competition between Buffalo and Clearmont, is there not?

A. Buffalo and Clearmont?

Q. Yes.

A. I hardly think so. I am not claiming that.

Q. But if there is, you claim the right to disregard it, is that your position?

A. I don't say that at all. I don't mean to give that impression.

Mr. Campbell: That is all.

Mr. Hagman: I want the record to show that some statement made by Mr. Hoffelder as to the holding of the Commission in those cases is not just as I understand the decision. We will have to refer to that for a correct statement of what the Commission ordered in those cases.

By Exam. Woodrow:

Q. Just one point, Mr. Hoffelder. Your Exhibit No. 3 deals with brick rates, and reparation involved on two other commodities, flue lining—isn't it, and fire clay?

A. They were charged the less than carload rate, Mr. Examiner, but to be perfectly frank with you, I was not able to check the rate that is shown on the Complainant's Exhibit.

Exam. Woodrow: Complainants were to furnish basis on which they desire reparation in regard to those two shipments, on
228 which they paid 47½ cents.

The Witness: If they were overcharged of course we can straighten that out.

(Witness excused.)

Mr. Hagman: All the defendants except the Wyoming Railway rest their case.

J. S. Reid was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Griggs:

Q. You may state your name, place of residence and official position.

A. J. S. Reid, Cedar Rapids, Iowa; Auditor of Revenue Accounts, Wyoming Railway.

Q. I will ask you, Mr. Reid, if you have charge of the matter of accounting of freight receipts, et cetera, for the Wyoming Railway?

A. Yes, sir.

Q. I will ask you, Mr. Reid, what this statement is.

A. This is a statement of traffic handled by the Wyoming Railway during the year of 1919, showing tons, revenue, percentage to total of tons and revenue, also ton miles, and revenue ton miles, on the commodities as indicated.

Q. Does this statement correctly show the total tonnage carried by the Wyoming Railway in the year 1919?

A. Yes, sir.

229 Q. This was prepared in your office, under your instructions and direction?

A. Yes, sir.

Q. Is the statement true in every particular?

A. To the best of my knowledge and belief it is correct.

Mr. Griggs: We offer the statement in evidence.

Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 4, Witness Reid," and is forwarded herewith.)

By Mr. Griggs:

Q. What is this Exhibit No. 5, Mr. Reid? What does it purport to show?

A. It is an analysis of traffic for the year 1919, showing number of carloads, number of tons, revenue, and the percentage to total in cars, tons and revenue, on each of the commodities as listed.

Q. And is this statement also prepared under your direction and in your office?

A. Yes, sir.

Q. And does it correctly represent the various items as described thereon?

A. To the best of my knowledge and belief it is correct, yes, sir.

Mr. Griggs: We offer this statement in evidence.

230 Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 5, Witness Reid" and is forwarded herewith.)

By Mr. Griggs:

Q. Referring now to Exhibit 6, what does that purport to represent?

A. That is an analysis of traffic for the year 1919, showing the division as between State traffic and interstate traffic in tons, revenue, and percentage of revenue, as based between State and interstate.

Q. This relates to the entire freight traffic carried by the Wyoming Railway in the year 1919?

A. Yes, sir.

Q. And was this statement likewise prepared from your books, under your direction?

A. Yes, sir.

Q. And correctly represents the various matters stated therein?

A. Yes, sir, to the best of my knowledge, and belief.

Mr. Griggs: Exhibit No. 6 is offered in evidence.

Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 6, Witness Reid," and is forwarded herewith.)

By Mr. Griggs:

Q. Have you any explanation to make of either of these
231 statements prepared by you?

A. No, sir, I think they clearly state what information I have.

Mr. Griggs: That is all.

Cross-examination.

By Mr. Campbell:

Q. As I understand Exhibit No. 4, your average revenue per ton-mile for that year was $.0987?
A. Yes, sir, that is correct.
Q. And that was all prior to the increase of August 26, of course?
A. Yes, sir.
Q. So that your revenues now, if increased 25 per cent, would be about $.115, instead of $.09; assuming that the same tonnage was handled your revenue per ton mile would be increased just 25 per cent, would it not, under the present rates?
A. Yes, sir.

Mr. Campbell: That is all I have.

(Witness excused.)

GEORGE E. BELT was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Griggs:

Q. You may state your name, place of residence, and official position with the Wyoming Railway.
A. George E. Belt, General Manager and Auditor. Residence, Cedar Rapids and Buffalo.
232 Q. How long have you been connected with the Wyoming Railway?
A. Since July, 1913.
Q. When was the Wyoming Railway organized?
A. The Articles of Incorporation, 1910.
Q. When was construction begun?
A. 1913.
Q. Mr. Belt, tell the Examiner the present condition of the Wyoming Railway with reference to total mileage, stations between which it operates, the general physical condition of the road, and any other facts pertaining to the Wyoming Railway which might be of interest to this Commission.
A. The mileage is 28.6. It operates between Clearmont and Buffalo; operates through a sparsely settled country, up the Clear Creek Valley.
Q. When was this railroad completed into Buffalo?
A. In 1918, I believe.
Q. How many stations are there on the road?
A. There are two—one station with Agent; the rest—and I think five prepaid stations, sidings, really.
The Railroad connects at the lower end with the Burlington.
Q. Is there any connection at the Buffalo end?

A. No.

Q. You say it has one station with Agent, an intermediate station with agent. What is the nature of that town. That, I presume is Ucross?

A. Ucross, yes.

233 Q. Tell the Commission the nature of this town of Ucross, the approximate population and the general conditions there.

A. The town is located at the junction of Old Piney Creek and Clear Creek. Its population I do not believe would exceed 100. I think it has one general store, and another store, a postoffice.

Q. What is the population of Buffalo?

A. Between 1,600 and 2,000.

Q. What is the population of Clearmont, so far as you know?

A. About 100; 150, possibly, I don't know.

Q. You say that it operates up the Clear Creek Valley. Tell the Commission the nature of the traffic that it carries through the Clear Creek Valley.

A. The most of the traffic is outbound traffic of livestock. It takes in general merchandise and supplies the town of Buffalo.

Q. Aside from supplying the town of Buffalo, has it any great volume of inbound merchandise?

A. It has nothing, practically, except that.

Q. What is the nature of the country that is supplied by this railroad? What are the chief industries of this country?

A. Livestock.

Q. It has been testified this morning that this Wyoming Railway follows a water grade. Can you tell the Commission the dif-

234 ference in elevation between one terminus and the other?

A. Clearmont is about 3,800 feet, 3,800 and some feet, and Buffalo is 4,600.

Q. So that there is a difference in elevation——

A. Between eight and nine hundred feet.

Q. What is the nature of the equipment of the Wyoming Railway? What have they in the way of equipment?

A. Very limited equipment: three locomotives; two combination cars, baggage and passenger and one chair car.

Q. And what in the way of freight equipment?

A. One box car and two flat cars is all the equipment.

Q. How many trains does it run daily?

A. One round trip.

Q. That is a combination train?

A. Combination train, passenger and freight.

Q. And the headquarters of the road are where?

A. Buffalo, that is, the operating headquarters. The general offices are in Cedar Rapids, Iowa.

Q. Are you familiar with the operating conditions of this road since the time of its organization?

A. Yes, sir.

Q. Tell the Examiner, briefly, the conditions under which this road is operated, with reference to financial difficulties and difficulties of physical operation.

A. The road started construction in 1913, and the war
235 broke out in 1914, which made it almost impossible to finance anything—that project—and the construction was delayed so that it was not completed until 1918 into Buffalo. Since that time, especially since 1913, the road has not been making its operating expenses.

Q. Why has it not been making its operating expenses? To what causes do you attribute that?

A. Well, largely to the general increase of all operating costs that there has been all over the country.

Q. So that your cost of operation has increased in common with other railroads throughout the United States?

A. Yes, and the revenue has not increased to a sufficient amount to offset.

Q. Did you have any difficulties with respect to obtaining materials and supplies to equip this railroad?

A. All during the war it was entirely if not almost impossible to obtain any supplies whatever for any purposes, the Railroad Administration requiring all material.

Q. As a result, what was the condition of your road?

A. Our road got in very bad physical condition.

Q. Is that condition improved at present?

A. It has improved some, yes, sir.

Q. But it is in good physical condition at the present time?

A. It would not be called in good physical condition, com-
236 pared with——

Q. Mr. Belt, you have charge of the records or the books and financial records of this company?

A. General charge, yes, sir.

Q. Now, Exhibit No. 7, tell the Examiner what this represents.

Mr. Campbell: I think there is an error in the date. You have got December, 1920.

Mr. Griggs: We will correct that. I am obliged to you.

By Mr. Griggs:

Q. What is this?

A. That is trial balance, showing general condition of the company at the end of the year 1919.

Q. I notice that this heading purports to be December 31, 1920. Is that correct or not?

A. It should be December 31st, 1919.

Q. So the Exhibit should be corrected in that particular?

A. Yes.

Q. Was this stat-ment prepared in your office and under your direction?

A. It was.

Q. And from the general books of your company?

A. It was.

Q. Does this statement correctly represent the matters purporting to be represented thereon?

A. It does.

Q. Does it correctly represent the financial condition of the
237 road at the time it was prepared?

A. Yes.

Mr. Griggs: We offer it in evidence, this Exhibit No. 7.

Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked "Defendants' Exhibit No. 7, Witness Belt," and is forwarded herewith.)

By Mr. Griggs:

Q. Referring now to the Exhibit No. 8, you may tell, Mr. Belt, what this is supposed to represent.

A. It is a statement of the operating revenues and the operating expenses, or the revenues and operating expenses for the years ending 1914, 1915, '16, '17, '18 and '19.

Q. Was this likewise prepared in your office, under your direction?

A. Yes, sir.

Q. And correctly represents the condition of the books of the Wyoming Railway?

A. It does.

Q. Is the statement here shown true and correct as to the matters delineated thereon?

A. Yes, sir.

Mr. Griggs: We offer in evidence, Exhibit No. 8.

Exam. Woodrow: It will be received.

(The statement was received in evidence, thereupon marked Defendants' Exhibit No. 8, Witness Belt," and is forwarded
238 herewith.)

By Mr. Griggs:

Q. Referring now, Mr. Belt, to the Exhibit, No. 8, and as to the first line thereof, you may tell the Commission what items were included in the freight revenue, as contained on the first line. What is this supposed to represent?

A. That was the receipts from the freight handled, both incoming and outgoing over the road.

Q. Does this figure represent the entire receipts from all freight handled by the railroad during the years respectively stated?

A. It represents the approximate proportion of what they earned, yes. It does not represent the entire amount collected.

Q. How about the passenger revenue, does that likewise represent all that was received from the carriage of passengers?

A. It does.

Q. And the same is true of the other items noted thereon?

A. Yes.

Q. You may tell the Commission what the total receipts from

operation of this railroad amounted to in the year 1918 and likewise in the year of 1919.

A. In 1918 it was $77,146.74. In 1919 $92,897.11.

Q. Turning to the other side of your account and referring now to the expenditures, I note in there several items marked "Superintendance."

239 You may explain to the Commission what these various items of superintendence were, and why they were separated.

A. Well, it is in accordance with the accounting as prescribed by the Interstate Commerce Commission, Superintendence of Maintainence and superintendence of transportation, they are different accounts.

Q. But these are separated, then, in accordance with the forms required by the Commission?

A. Yes, by the Commission, prescribed forms of accounting.

Q. Do these items of expenditure include and embrace all items of expenditure of the railway for the years as respectively stated?

A. All the items of expenditure, yes.

Q. You may now state to the Commission what the total operating expense of the railway was for the year 1918 and also for the year 1919.

A. The operating expense, alone, was for 1918, $76,936.87; for 1919, $72,618.86.

Q. Then for the years 1918 and 1919, referring only to the operating expense, what was the profit above cost of operation?

A. Well, that is different.

Q. Earnings above cost of operation?

A. The figures I quote do not include the hire of equipment. All those income debits, which are in the way of operating expense——

240 Q. I will refer to that in a minute.

A. Well, the operating revenue, then, for the year 1918,—I will have to ask you whether that is——

Q. It is $209.87, and the other is $20,278.25.

A. $20,278.25. My copy is not plain at all.

Q. What are the items referred to on this report as income debits? Explain that to the Examiner.

A. They are the hire of equipment, what we pay foreign roads for the use of their equipment. The railroad tax accruals, our taxes——

Q. On what?

A. On the railroad property.

Q. That would include your County and State taxes?

A. That would include the County and State taxes. And that is about all the items, except——

Q. What would the item of "Hire of Equipment" include. What are embraced in that item?

A. The amount we paid foreign roads for the use of their cars while on the Wyoming line.

Q. What arrangement have you with foreign roads with reference to that?

A. We pay the regular prescribed per diem.

Q. What is that?

A. At the present time it is 90 cents.

Q. Per day?

241 A. Per day, yes.

Q. And that is the usual and customary charge to foreign roads?

A. It is the universal charge, I believe.

Q. So that there is nothing unusual or exceptional in that charge, so far as the railroads are concerned. Referring, then, further to the statement and after deducting from the balance shown of total operating revenues, the operating expense and these income debits, what is the condition for the years 1918 and 1919 with reference to earnings?

A. Well, in 1918 it shows a loss of $8,080.34, and in 1919 a profit of $11,539.99—purely operating revenue.

Q. Referring then, further to the report, what are the items of "Interest on Funded Debt" and "Interest on unfunded Debt" which appear below?

A. Interest on Funded Debt includes the interest charges against the bonds or any other obligation of the Company, the maturity of which extends to a time, longer time than one year. Interest on Unfunded Debts is the short time notes, interest on short time obligations.

Q. Can you state at this time what the bonded indebtedness of the Wyoming Railway was at the close of the year 1919?

A. This exhibit does not show it. It was about $519,000, I think.

Q. Referring now to the Exhibit No. 7, being the trial

242 balance for December 31, 1919, you may state what the bonded indebtedness and the unfunded debt of the railroad was on December 31, 1919.

A. The bonded indebtedness was $536,000, and liabilities $117,452.70.

Q. You have just testified to current liabilities?

A. Yes.

Q. Of the road. After deducting from the total receipts the various deductions you have just testified to, you may state the condition as of December 31, 1918 and 1919 of the revenue of the company.

A. Deducting—the net operating revenue after deducting interest charges, was for 1918, a loss of $43,480.72, and in 1919 $24,917.89.

Q. Was the interest upon the bonds of this company paid in the years 1918 and 1919?

A. It was not.

Q. How long has it been since this company has paid the interest upon its bonds?

A. About two and one-half years, I think.

Q. Has this company at any time since its organization paid any dividends upon its stock?

A. No, sir.

Q. How many years did it pay interest on bonds?

A. It paid interest on its bonds for three years, I think.

243 Q. Since then there has been no interest paid on bonds?

A. That is correct.

Q. Mr. Belt, suppose that the revenues of this company were materially decreased by a decrease of rates, what would be the financial effect upon the company?

A. It would have to cease business.

Q. If this company has operated at a loss for the past two years, why has it not already ceased business?

A. It has been living in hopes that the conditions might change; also that they might receive some reparation from the Government, I believe, during the time the roads were under Government Control.

Q. Has it received any such to the present time?

A. It has not.

Q. And what are the present conditions with reference to the prospects of greatly increasing the revenue at the present time? In other words, would you say that at the present time there was reason to believe that the revenues will be materially increased from natural causes?

A. No, sir.

Exam. Woodrow: We will adjourn until two o'clock.

(Whereupon at 12:35 P. M. a recess was taken until 2:00 o'clock P. M.)

244 After Recess.

GEORGE E. BELT resumed the stand.

By Mr. Griggs:

Q. Mr. Belt, supposing that the revenues of the Wyoming Railway should be materially curtailed, what would be the result upon the operation of the railroad?

A. The railroad would be unable to operate.

Q. In your opinion, Mr. Belt, does this Wyoming Railway fill a need in the community which it serves?

A. I believe it does.

Q. What would be the conditions in and about Buffalo and in Johnson County generally, if the railroad should cease to operate?

A. They would have to depend upon team freighting and truck freighting, the same as they did before the railway was constructed.

Q. From what points would the merchandise have to be freighted?

A. It was almost exclusively from Clearmont before the railroad was built, part of the freight coming from Sheridan, possibly.

Q. What is the relative cost, if you know, of trucking, with reference to the rates now charged by the Wyoming Railway? Would it be greater or less?

A. It would be greater.

Q. In addition to that it is always possible to secure freight by teams and trucks?

A. No, there are certain times of the year when the roads
245 are impassable. Last winter I guess trucks ceased business between Sheridan and Buffalo for three or four months; I don't know the exact time.

Mr. Griggs: I believe that is all.
Exam. Woodrow: You may cross examine.

Cross-examination.

By Mr. Campbell:

Q. Mr. Belt, you say this road was commenced in what year?
A. 1913.
Q. How did that road come to be built there?
A. Well, I don't know that I can give you the exact reason. The citizens of Buffalo had been trying to get a road in there for years. It had been started, I believe, in 1910 by some other citizens of Buffalo and they tried to finance it, and the organization goes back to 1910, but the financing failed, and they finally got folks interested that took up the matter.
Q. Is it not a fact that the stockholders of the railroad are also stockholders in a large land company in and about that vicinity?
A. That is not exactly the truth.
Q. To what extent is that true?
A. The stock of the railroad and the stock of the land company are owned by the same company.
Q. And does this same company not own also oil lands which they are developing?
246 A. No. No, they have—some of the individuals may have some interest in oil, but the company has not.
Q. Now, this land company owns, controls under option, large quantities of land in that section, does it not?
A. They own some land. They have nothing under option now, I believe.
Q. And this railroad was built to a large extent for the purpose of developing and increasing the value of this land?
A. It was built for the development of the whole country, yes.
Q. And it is true that the land owned by this company, that also owns the stock in the railroad, has increased very materially in the last few years?
A. All the land, all lands in Johnson County have increased.
Q. And largely due to the fact of the building of the railroad?
A. Yes, sir, that was one element.
Q. Now, Mr. Belt, when was your line finally built into Buffalo?
A. 1918; I think it was in February. I am not sure exactly of that date.
Q. Prior to the completion of the line into Buffalo, how were the commodities in and out of Buffalo handled?
A. To the completion of the line?
Q. Yes.

A. We began hauling when the line—run freight cars to that point, and I think all the freight that was handled in 1914 and '15 was handled as far as Ucross. From that point it was
247 teamed on.

Q. Then it was finally built within a mile or two of Buffalo in 1919, was it not?

A. No, it was built into Buffalo in 1918, I think.

Q. How close to Buffalo had it reached and then stopped for a considerable length of time, before finally built into Buffalo?

A. Well, it had a number of terminals: first completed to Ucross and operated almost a year to Ucross; then it operated to a little station they called Watt, about a year; from there it operated another series of months to the station of Redman, and then it was built on to two miles, maybe a mile and a half this side of Buffalo.

Q. How long did it remain a mile or two miles out of Buffalo?

A. I cannot give you that accurately. I don't know.

Q. Now, did not the company in order to build into Buffalo, go to Buffalo and sell stock to the citizens for the purpose of raising money to build it into Buffalo?

A. No, sir, there were some bonds placed back in 1913 in the town of Buffalo.

Q. Now, Mr. Belt, your line has not been a completed line except for a period of approximately two years?

A. About that.

Q. And during the last of the two years you earned $20,000 over and above your operating expense, the year 1919?

A. Well, the fixed operating expense, without hire of equipment.

248 Q. I mean operating expense.

A. Yes, pure operating expense.

Q. So that your ratio of operating expense to operating return is not unduly high, is it?

A. I believe our operating expense is economical.

Q. Is economical. Now, don't you think that that is a remarkably good showing for a new railroad that has been built but two years?

A. Well, that shows in the red as much as it does—I don't believe it is.

Q. Your average return on all traffic for 1919 was $.0987, was it not?

A. I do not know.

Q. That is shown on Exhibit No. 4, and if that is shown do you have reason to believe that that is correct?

A. Yes.

Q. Can you name any short line or any other railroad in the United States whose average return on all freight was higher than that during the year 1919?

A. I cannot, nor can I name one that is lower. I am not familiar enough to form a judgment.

Q. Now, on August 26, your rates were increased 25 per cent, the same as every other railroad in this vicinity?

A. This last August, yes, sir.

Q. Yes. Now, if in 1920 you shall have the same amount
249 of traffic and your operating expense is not more, you will have earned sufficient to pay something over and above all your expenses, will you not?

A. No, I don't think 25 per cent will quite catch up our deficit, will it?

Q. My figures show it will amount to $26,428, while your deficit is $29,917.

A. Since the award of the Labor Commission our operating expenses are bound to increase. We cannot keep that down to this ratio.

By Exam. Woodrow:

Q. Has the State of Wyoming permitted the 25 per cent increase in the State?

Mr. Campbell: I think it has.

A. Yes.

Mr. Campbell: I think the only state that did not was Idaho, and possibly Montana, in passenger rates. California has given the increase. At any rate, Wyoming I think has.

By Mr. Campbell:

Q. Now, Mr. Belt, in view of all those circumstances, the building of this road, the completion in such a short time, don't you think that you could go before your stockholders and claim that that was a remarkably good showing for that line?

A. I cannot make the stockholders believe that.

Q. How much, Mr. Belt, of the capital stock of this railroad has actually been paid in?

250 A. Capital stock? Our book record shows it is all paid, full paid.

Q. So that the stock and bonds actually represent true value, do they?

A. Stock and bonds our book value shows, is the value of the road, yes.

Q. And did you have to sell any of those bonds at less than par?

A. Yes, sir.

Q. How much?

A. Fifteen per cent, and also a share and a half of the common stock.

Q. So that to the extent of fifteen per cent——

Mr. Griggs: One moment. I think your statement about a share and a half of common stock perhaps is in error. Aren't you referring to the Wyoming Company?

A. Yes, I am referring to the Wyoming Company.

Mr. Griggs: Let us keep these two corporations clear.

By Mr. Campbell:

Q. Then to the extent of 15 per cent of the bonds it does not represent true value so far as the actual money is concerned?

A. It is a discount which has to be taken up in our operating expense and amortized.

Q. When this road was built you bought second hand rails, did you not?

251 A. Yes, sir.

Q. And second ties?

A. No, sir.

Q. And all your equipment was bought second hand?

A. Well—all of our equipment?

Q. Yes. Your engines were old engines?

A. They were rebuilt engines.

Q. And your cars were second hand cars?

A. Yes.

Q. And you have had considerable expense in the maintaining of that old equipment, have you not?

A. Yes, we have, naturally more than if they were new, I suppose.

Q. And you have had a good many accidents on account of it, haven't you?

A. On account of the equipment? No, sir.

Q. Didn't you have an accident just recently where the engine, on account of its condition, tipped over?

A. No, sir.

Mr. Griggs: If the Examiner please, I want to offer an objection to this form of Cross examination as being wholly immaterial. I cannot see that that makes any difference in this issue at all.

Exam. Woodrow: Counsel will please bear in mind that there are three more cases to be heard to-day, and the record is

252 rather long already.

By Mr. Campbell:

Q. Now, Mr. Belt, you say if this railroad was abandoned, the people of Buffalo would have to resort to trucks, is that true?

A. That is given as an opinion. I don't know what they would do.

Q. And you thought it would be to their disadvantage. Is it not a fact that recently you have reduced your intrastate rates from Clearmont to all points on your line to meet truck competition?

A. Recently? No, sir.

Q. Will you look at Wyoming Railway Local Freight Tariff effective August 28th?

A. Well, that is not a reduction. That is an increase.

Q. But it is an increase of reduced ra[illegible], rates reduced for the purpose of meeting truck competition?

A. There was a rate put in between Sheridan and Buffalo that was something over—I guess been in for three year or more.

Q. Well, it was made for that purpose?

A. That was one of the purposes, possibly.

Q. So that intrastate you maintain between Clearmont and Buffalo a first class rate of 35 cents, do you not?

A. As to the intrastate rate I cannot give you the rates without——

Q. I will ask that this be marked and be introduced as part
253 of the cross examination of Mr. Belt.

(The tariff was received in evidence, thereupon marked "Complainants' Exhibit No. 9, Witness Belt," and is forwarded herewith.)

By Mr. Campbell:

Q. Now, Mr. Belt, that shows a first class rate of 35 cents, while the first class rate in your tariff does——

Mr. Griggs: We want to object, if the Examiner please, to questions of this witness upon the rates, for the reason that he is not qualified, nor have we asked him on direct examination.

Exam. Woodrow: The objection is well taken. Please confine your cross examination to the direct examination. If you have any rate matters that you want to bring out, counsel will bring them out by some other witness.

Mr. Campbell: We will put them in in rebuttal.

By Mr. Campbell:

Q. One thing I want to ask you about: you have here in expenses "Woolhouse." What is that?

A. Woolhouse? We have for the handling and storage of the wool that is cut in that region, wool clipped every year, built a warehouse, and you will note there is a revenue from that warehouse, and this woolhouse has an expense, and the expense is handling and storage.

Q. Sort of a freight house?

A. That is what it is. Our tariff covers that, I believe.

Q. Have you any high priced salaried men as Presidents
254 or Managers of this railroad?

A. Have not.

Q. Your operating wages are along about the same as other roads of similar construction?

A. Our operating expense as a rule I think is less than trunk lines in all departments.

Mr. Campbell: I think that is all.

Redirect examination.

By Mr. Griggs:

Q. In reference to high priced salaried men, do the officers or directors of this company receive any salary whatever?

A. They do not.

Mr. Griggs: That is all.

By Mr. Hagman:

Q. In the answer of the Wyoming Railroad Company in this case I think it is stated that application was made by your road to the Burlington Road to establish joint rates?

A. On all material, I understand that to be the case on everything.

Q. If such joint through rates were established, how much less will your road be able to take than it now receives for transporting goods over the Wyoming Railroad?

A. We could not exist—we would have to have the full amount at least of our present local rate in any division that they made, in order to enable us to exist.

255 Q. Is your road willing to voluntarily establish any joint rate in which it will receive less than its present local charge?

A. I do not think so.

Q. In view of your financial condition and operating and traffic conditions do you believe that you can carry your traffic for any less money than you are now carrying it?

A. We cannot.

Mr. Hagman: That is all.

By Mr. Campbell:

Q. And you have no objection to the establishment of joint rates, providing satisfactory divisions were given to your line?

A. Providing that we would receive at least as much as we are receiving now.

Q. What proportion of your entire business would the traffic involved in these rates be?

A. This traffic? I am not prepared to answer that.

Mr. Griggs: That shows on the exhibits—the exhibits will show that.

By Mr. Campbell:

Q. Now, it would naturally increase the amount of the business, would it not, if there was a joint through rate which was no higher than the Clearmont rate?

A. It might; I don't know.

Q. And if it did, some of the slack would be taken up by increased business, that would be true, of course?

256 A. If it did increase the business.

Q. Yes. Now, have you figured the amount of loss it would be upon this traffic if you had to cut your rates below what they are now—what difference it would make in your revenue? Have you considered that at all?

A. I cannot give you the figures, no, sir.

Exam. Woodrow: Mr. Belt does not qualify as a rate expert, and the testimony has not pertained to that.

Mr. Campbell: But he has testified as to what effect this will have on his revenue, and to that extent I have a right to inquire, it seems to me. Now, he is the General Manager, he is the man that is responsible for this revenue, and he is here testifying as to the revenue and the effect it will have upon it, and that is what I am inquiring about.

By Mr. Campbell:

Q. You have men, have you not, in your enploy that could figure that out?

A. Yes, sir.

Q. And that has not been done?

Mr. Griggs: I would like to know what it is that you want figured out. I have not that plain in my mind. I don't know what you want. What is it you want, please?

Mr. Campbell: I want to know what the proportion of this traffic is to the total traffic, and what the loss——

Mr. Griggs: That is all on the exhibit. Now, what else do you want.

257 By Mr. Campbell:

Q. Now, if you were required to take a division along the same lines as divisions are granted in this same general territory to other lines, do you know what those divisions are?

A. No, sir.

Q. Have you inquired?

A. No, sir.

Q. Did the Burlington, when you requested a joint through rate, make any suggestions as to what divisions they were willing to give you?

A. The request was not made by me, and I do not know what arrangement was made or what answer was made.

Q. Do you know what answer was made by the Burlington?

A. No, sir, I do not. Nothing done, I think, so far.

Mr. Campbell: I think that is all.

(Witness excused.)

Exam. Woodrow: Refer back to the record to the reference to the cross examination which was out of place.

(The Reporter read a certain portion of the cross examination and the tariff which was introduced on cross examination as "Complainants' Exhibit No. 9," was withdrawn.)

Exam. Woodrow: Next witness.
Mr. Griggs: That is all.
Mr. Campbell: I would like to recall Mr. Brown for identification.

258 R. S. BROWN was thereupon recalled, and having previously been sworn, testified further as follows:

By Mr. Campbell:

Q. Mr. Brown, referring to Exhibit marked "Witness Belt, Exhibit No. 9," I will ask you to state what that is.
A. Exhibit No. 9 is a tariff filed with the Wyoming Public Service Commission, bearing their number 10, Proportional Local Freight Tariff Applying on Classes between Clearmont, Wyoming and stations on the Wyoming Railroad. It is restricted in its application as follows:

"Rates shown in this tariff apply only on shipments originating at or destined to Sheridan, Wyoming, and apply only on intrastate traffic."

This tariff says that the first class rate, for instance, between Clearmont and Buffalo, is 35 cents on traffic that originates at or is destined to Sheridan, Wyoming.

Mr. Campbell: Now, we desire to offer exhibit No. 9 for the reason that the Examiner having held that that line of cross examination was improper of Witness Belt, I would like to offer that as rebuttal testimony.
Exam. Woodrow: All right, what do you expect to prove by that?
Mr. Campbell: I expect to prove that intrastate class rates are lower than the class rates when applied in connection with interstate traffic.
259 Exam. Woodrow: Has the Wyoming State Commission anything to do with that intrastate rate?
Mr. Campbell: Yes, I presume it has been allowed by them. Now, will you refer to Exhibit 8?
Exam. Woodrow: The Examiner does not of course realize what counsel has in mind.
Mr. Campbell: I have in mind this: he says that these rates cannot be reduced because of loss of revenue, and yet he goes and reduces his class rates intrastate, all his class rates, way below the figure of his regular class rates when applied to interstate traffic, showing that he can reduce these rates below the point where he has them now when it suits his convenience.
Exam. Woodrow: You don't know whether that is required by the Wyoming State Commission or not.
Mr. Campbell: I asked him if it was not done to meet the truck competition. I don't know what it was done for. I don't think it

is material what it was done for. They can explain what it is done for if they wish, but I want the fact to appear.

(The tariff so offered was received in evidence, thereupon marked "Complainants' Exhibit No. 9, Witness Brown," and is forwarded herewith.)

By Mr. Campbell:

Q. I offer Complainants' Exhibit 8, Witness Brown, and ask you to state what the class rates as shown in that exhibit are.

260 A. Exhibit No. 8 is Wyoming Railway Company's Local Freight Tariff I. C. C. No. 38, applying on classes and commodities between stations on the Wyoming Railway Company, which was made effective on interstate business August 26, 1920, intrastate August 28, 1920.

Q. What is the 1st class rate?

A. The 1st class rate between Clearmont, Wyo. and Buffalo, Wyo. in this tariff is 59 cents.

Q. Contrasted with 35 cents under the State rate?

A. Yes. Of course that State tariff applies on business to and from Sheridan, only.

(The tariff in question, so identified, was received in evidence, thereupon marked "Complainant's Exhibit No. 8, witness Brown" and is forwarded herewith.)

Cross-examination.

By Mr. Griggs:

Q. Do you know why this rate was established?

A. I have no idea.

Q. This tariff, Wyoming P. S. C. No. 10, referred to by you, says that it is applicable only on shipments originating at or destined to Sheridan, Wyoming, and applies only on intrastate traffic?

A. I made that statement.

Q. As a matter of fact, in addition to the local rate on the Wyoming, which is referred to in this tariff, there is a local tariff on the Burlington between Sheridan and Clearmont, isn't that a fact?

A. Very true.

261 Q. Therefore, in order to meet competition with trucks between Sheridan and Buffalo, it was necessary to fix a rate between Sheridan and Buffalo via Clearmont which would meet it, is not that a fact also?

A. If they wanted to compete with that traffic it was necessary.

Q. Therefore, is it not true also that external conditions affected this tariff, that would not affect traffic on a direct line between Clearmont and Buffalo, that is true also, isn't it?

A. Yes, that is true.

Q. So that this rate in Wyoming P. S. C. No. 10 would be based on very different and external conditions from what an ordinary

rate would be for the same distance, because it is a competitive rate? Doesn't that explain this rate to you?

A. Not to me, no. I know what the tariff is, and the tariff don't explain the reason for its being in there.

Mr. Griggs: That is all.

Exam. Woodrow: Is that your case?

Mr. Griggs: That is our case.

Mr. Campbell: That is our case.

Exam. Woodrow: The Examiner would like the complainants' counsel to restate his position with respect to the future rate and his position with respect to the reparation involved in these shipments, in a word.

Mr. Campbell: Since the question came up yesterday, I
262 have gone over the complaint more carefully. As stated before, I did not draw the complaint, and I had not probably gone over it as carefully as I should have. But I think there can be no mistake in the position, from the complaint. The prayer is perfectly plain and asks exactly upon what basis reparation should be granted. It asks for the establishment of a reasonable rate for the future, and then asks for reparation between the rate paid and the rate established as a reasonable rate. I got confused on it yesterday, but there seems to be no confusion whatever when you read the prayer. The prayer is, "Wherefore complainant prays that the defendants may be required to answer the charges herein and after due hearing and investigation an order be made commanding the said defendants to publish just and reasonable through interstate rates for the future, and that each of them be ordered to pay to complainants by way of reparation for the unlawful charges hereinbefore alleged, the difference betwen the charges assessed, as shown in Exhibits A, B, C, D and E, attached hereto, and charges based on rates found to be reasonable."

Now, there is no—there cannot be any mistake in regard to that. Whatever rate this Commission finds to be a reasonable rate for the future, that establishes the reparation, between that and what was actually paid. Under the prayer of the complaint there could be no other position taken.

263 Now when I read that yesterday I read it hurriedly and I thought it stated it differently, but I think it is perfectly clear, and that is our position.

Exam. Woodrow: You are not attempting to qualify the position taken with respect to the reparation feature upon the double increase?

Mr. Campbell: The double increase I think is evidence going to the question of the reasonableness of the rates at the time, but the measure of reparation, however, is clearly stated. I think the evidence as to the double increase is evidence going to the reasonableness of the rate charged during Government Control, but I do not think it has much to do with the establishment of a reasonable rate for the future.

Exam. Woodrow: Does Counsel realize that the record is full of

admissions that if the single increase had been applicable that there would be no reparation feature in this case?

Mr. Campbell: What is that?

(The Examiner's query was read.)

Mr. Campbell: No, I do not think there are any admissions of that character. I stated yesterday that it was our contention—it was from a misreading of the complaint at that time—that we claimed that for the movement under Government Control reparation should be the difference betwen the double and the single increase,
264 but I think that under the complaint that would not be true—it would be the establishment of the rate for the future—unless the Commission found that there was no necessity or no evidence sufficient to justify the establishing of any different rate for the future. Then in that event I think we would be entitled to reparation on the double increase.

Exam. Woodrow: Have you anything to say, Mr. Hagman?

Mr. Hagman: Nothing except to say that defendants take the position that both of those allegations of the complaint clearly show that reparation is based on the fact that each separate factor was increased instead of only one increase applied, and it seems to me that if Mr. Campbell intended anything else he should have made it sufficiently plain so that we would not have to have this argument about it here. He has not amended his complaint and that is the issue presented, and I think we will insist on the issue being as made by the pleadings.

Exam. Woodrow: Have complainants any further testimony with respect to damages in support of the alleged violation of Section 3?

Mr. Campbell: No. We have shown the discrimination; we have shown the competition we have had to meet, and that is the issue arising in cases of this kind.

Mr. Hagman: They are not asking reparation because of discrimination feature, so there would be no necessity of proving
265 damage by reason of discrimination. They are alleging discrimination in support of their request for a joint rate for the future, as I understand it.

Exam. Woodrow: Is that the complainants' position?

Mr. Campbell: I don't know as I get that.

(The statement of Mr. Hagman was read.)

Mr. Campbell: We are claiming damage, reparation, upon all of the testimony of the complainants. The Commission has refused repeatedly to grant reparation where there is nothing but discrimination alleged, and I presume that they may take that position here. I have always claimed they were wrong, but nevertheless they have usually taken that position, that they do not grant reparation on discrimination cases.

Exam. Woodrow: Without damages shown.

Mr. Campbell: Yes, and that is a very hard thing to do in discrimination. It is pretty remote, pretty hard to show.

Exam. Woodrow: The Examiner was just bearing in mind those facts. Have you anything further?

Mr. Campbell: I am frank to say under the rulings of the Commission if we had nothing but discrimination in thi case I doubt very much if there would be sufficient in the record to support reparation.

Exam. Woodrow: You rely entirely on Section 1 for reparation in this case?

Mr. Campbell: Section 1, and section 10 of the Federal
266 Control Act, and of course the rules established by the Director General.

Exam. Woodrow: And you are, in effect, withdrawing your allegation as to Section 2 and Section 3?

Mr. Campbell: I am not under any circumstances withdrawing either. We are maintaining that a through rate should be granted for the future because of violations of Sections 2 and 3.

Exam. Woodrow: Not relying upon them for reparation?

Mr. Campbell: No, not relying particularly upon them as to reparation.

Exam. Woodrow: Anything further in this case, gentlemen? Do counsel want to discuss the case?

Mr. Campbell: We are through. I think that this is a case that ought to be briefed. I don't think we want to waive the privilege of briefing this case.

Exam. Woodrow: Briefs will be due on October 22. Do you desire argument before the Commission?

Mr. Campbell: Is it not the custom to defer that until the Examiner's report, and then file exceptions? I do not want to waive any right to ask for argument.

Mr. Griggs: I might say in reference to the position of the Wyoming Railway, the Chief Counsel for this Company are located in Chicago. I came into this case really at the last moment, and I
267 am not clear now, without conferring with them, whether they would care to have argument before the Commission or not. Would it be possible to leave that matter open?

Exam. Woodrow: That can be set forth in your exceptions to the Examiner's report, if there be any.

If there is nothing further this record is closed.

(Whereupon at 2.45 o'clock P. M., on the Seventeenth day of September, 1920, the hearing in the above-entitled matter was closed.)

268 EXHIBIT No. 1.

Interstate Commerce Commission.

Docket No. 11608.

Witness, Brown.
Complainants' Date, 9-16-20.
Reporter, Flannery.

Freight Rate Authority No. 10.

Increased Charges under General Order No. 28 for Continuous Through Hauls Subject to Combination Rates.

Freight Rate Authority No. 10 of the Director, Division of Traffic, dated July 2, 1918, reads as follows:

Application of Increases under General Order No. 28 to the Through Movement of Commodities Except Grain and Its Products.

"Under date of June 8, 1918, I wired as follows:

'Rates as increased by Section 2, Paragraph 4, Order 28, should be applied to the through movement of commodities, except grain and its products. Where increase is on percentage basis the result will be the same whether applied to combinations or through rates but where flat or maximum increase per ton or hundred pounds is made some adjustment will be necessary to apply the increases to the through movement. This should be accomplished where possible by publication of specific through rates or by use of proportional rates. Use this basis as far as practicable in publishing tariffs effective June 25, 1918.'

On the 17th instant I wired again:

'Referring to my wire eighth authorizing application of increases under Section 2, Paragraph A, General Order 28, to the through movement of commodities, except grain and its products. The Interstate Commerce Commission will accept special supplements containing the following:

'When the total charges on a through shipment of any of the commodities specified below are constructed on combinations of separately established rates applying to and from junction points, first determine the through combination of rates in effect on June 24, 1918, and then increase such through combination of rates by the amounts set opposite each such commodity, viz.:'

269 Here should follow a list of all of the commodities and the increases thereon named in Paragraph A, Section 2, except grain and its products and except coal and coke. We do not wish to apply the specific increases to the through haul of grain and its products, and coal and coke rates are so complicated as to make it impossible to use this general rule for them. Would be glad to have this provision used in special supplements wherever needed and wherever possible to make effective by June 25, 1918.

I appreciate that the time elapsing between the date of these telegrams and June 25 was so short that in many instances it was impossible to bring about the application of rates under General Order No. 28 as outlined in my wire of the 8th, and as it is desirable to bring this application about as rapidly as possible this will be

authority for such publication as is necessary to apply to the through continuous haul of the commodities named in Paragraph A, Section 2, of General Order No. 28, and increases as shown therein, except on grain and its products.

You will also arrange such publication as will apply the minimum scale of class rates as provided in Paragraph D, of Section 1, and the minimum carload charge of $15.00 per car as provided in Paragraph B of Section 5 of General Order 28 as amended to through continuous hauls.

Please quote in schedules making such publication "Freight Rate Authority No. 10" in the manner prescribed in Circular 1-A, July 1, 1918, as authority for the publication which shall be made on one day's notice and filing with the Interstate Commerce Commission.

Also show on title page of schedules in large type "United States Railroad Administration, W. G. McAdoo, Director General of Railroads."

Please note that the provision which my wire of the 17th instance stated would be accepted by the Interstate Commerce Commission, ran only to the special supplement to be published, effective June 25, 1918, so that the publication should now be made in regular form by use of through or proportional rates or such other manner as you think practicable under the Commission's Tariff Rules.

Yours very truly,

(Signed) EDWARD CHAMBERS."

(Here follows statement marked page 270, map marked page 271, statements marked pages 272, 273, 273½, and 274, and reproduction of printed pages 274½, 275, 276, 277, 278, 279, 280, and 281.)

[Map, page 271, endorsed on back as follows:]

271½ [Endorsed:] Interstate Commerce Commission. Docket No. 11608. Exhibit No. 3. Witness, Brown. Complainant's Date, 9-16-1920. Reporter Flannery.

EXHIBIT No. 1.

Interstate Commerce Commission.

Docket No. 11608.

Witness, Bolander.
Defendants' Date, 9-17-20.
Reporter, Flannery.

Great Northern Railway Company.

Statement Showing Various Rates on Forest Products from Representative Shipping Points in the Northwest for Distances Corresponding with Distances to Clearmont, Wyoming.

	Dist.		Rate Aug. 25th, 1920.	Rate per ton per mile.	Rate Aug. 25th, 1920.	Rate per ton per mile.	Issued by—	G. F. O. No.	I. C. C. No.
Libby, Mont., to Clearmont, Wyo.....	784.2	Fir & Pine...	.38¢	.0096	.47½	.0121	G. N. Ry.	250-B	A-4858
		Cedar	.47	.0119	.59	.0150			
		Shingles	.48	.0122	.60	.0152			
Bonners Ferry to Clearmont.....	838.8	Fir & Pine...	.38	.0091	.47½	.0113	"	250-B	A-4858
		Cedar	.48	.0115	.60	.0143			
		Shingles	.48	.0115	.60	.0143			
Priest River to Clearmont.....	889.5	Fir & Pine...	.38	.0085	.47½	.0106	"	250-B	A-4858
		Cedar	.48	.0107	.60	.0134			
		Shingles	.48	.0107	.60	.0134			
Albany Falls to Clearmont.....	893.4	Fir & Pine...	.38	.0085	.47½	.0106	"	250-B	A-4858
		Cedar	.48	.0107	.60	.0134			
		Shingles	.48	.0107	.60	.0134			
Libby to Mondak.....	659.4	Fir & Pine...	.35	.0106	.44	.0133	G. N. Ry.	650-D	A-4834
		Cedar	.37	.0112	.46½	.0141			
		Shingles	.42	.0127	.52½	.0159			

Statement Showing Various Rates on Forest Products—Continued.

	Dist.		Rate Aug. 25th, 1920.	Rate per ton per mile.	Rate Aug. 25th, 1920.	Rate per ton per mile.	Issued by—	G. F. O. No.	I. C. C. No.
Libby to Berthold, N. D.	781.1	Fir & Pine...	.38	.0097	.50½	.0129	R. H. Countiss.	18-C	1058
		Cdr. & Shgls.	.48	.0122	.64	.0163			
Bonners Ferry to Berthold, N. D.	830.7	Fir & Pine...	.38	.0091	.50½	.0121	"	18-C	1058
		Cdr. & Shgls.	.48	.0115	.64	.0154			
Priest River to Berthold, N. D.	886.4	Fir & Pine...	.40	.0090	.53½	.0120	"	18-C	1058
		Cdr. & Shgls.	.50	.0112	.66½	.0150			
Albany Falls to Lone Tree, N. D.	895.0	Fir & Pine...	.40	.0080	.53½	.0119	"	18-C	1058
		Cdr. & Shgls.	.50	.0111	.66½	.0148			
Seattle to Paola, Mont.	657.4	Fir & Pine...	.39	.0118	.49	.0149	G. N. Ry.	250-B	A-4858
		Cdr. & Shgls.	.42½	.0129	.53	.0161			
Seattle to Concord	783.7	Fir & Pine...	.40	.0102	.50	.0127	"	250-B	A-4858
		Cdr. & Shgls.	.45	.0114	.56½	.0144			
Seattle to Power	838.8	Fir & Pine...	.40	.0095	.50	.0119	"	250-B	A-4858
		Cdr. & Shgls.	.42½	.0101	.53	.0126			
Seattle to Wayne	886.8	Fir & Pine...	.40	.00902	.50	.0113	"	250-B	A-4858
		Cdr. & Shgls.	.47	.0106	.59	.0133			
Seattle to Chinook	891.9	Fir & Pine...	.41	.0092	.51½	.0115	"	250-B	A-4858
		Cdr. & Shgls.	.47	.0105	.59	.0132			

Prepared September 14, 1920, by Western Traffic Manager, Great Northern Railway Co., Seattle, Washington.

283 EXHIBIT No. 2.

Interstate Commerce Commission.

Docket 11608.

Witness, Bolander.
Defendants' rate, 9-17-1920.
Reporter, Flannery.

Before the Interstate Commerce Commission.

I. C. C. Docket Nos. 11224 et al.

WILBUR LUMBER COMPANY, et al. *et al.*, Complainants,

vs.

DIRECTOR GENERAL, as Agent, et al. *et al.*, Defendants.

Date, June 16, 1920.
Place, Washington, D. C.

Testimony of Mr. Hastings.

284 P. P. HASTINGS was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Finerty:

Q. Mr. Hastings, will you state your position with the Railroad Administration during the period of Federal control?

A. I am at present special traffic assistant, Division of Law of the Railroad Administration. For the two years during Federal control, beginning in March, 1918, and ending on March 1st, 1920, I was assistant in the Division of Traffic for the United States Railroad Administration.

Prior to that time for some 10 or 12 years I was either assistant general freight agent or general freight agent of the Santa Fe Railway at different points.

Q. In your connection with the Railroad Administration were your duties in any way connected with the Director of Traffic, Mr. Chambers?

A. Yes, sir; I was one of his assistants. I reached Washington to work with Mr. Chambers for the Railroad Administration in March, 1918, just about the date of the passage of the Federal Control Act. Prior to the passage of the Federal Control Act, which gave to the President the authority to initiate rates, I think no action had
285 been taken by the Railroad Administration relative to advances or changes in the freight rates, but from that time con-

sideration was immediately given to the subject, and in my capacity as assistant in the Division of Traffic, and very closely associated with the Director, I sat in, I believe, all conferences relating to freight rates. I also assisted in the preparation of general Order 28, and after General Order 28 was promulgated, I was given charge of the freight rates department and either in conference with Mr. Chambers, or acting on the authority delegated to me I passed on a great many of the questions arising under General Order 28 and personally review and signed for the Director practically all of the freight rate authorities which made voluntary concessions and changes in freight rates after the date General Order 28 became effective.

Q. That would include Freight Rate Authority No. 10 and Freight Rate Authority 6945?

A. Yes, sir.

Q. In the conferences preceding the issuance of Order 28, were you consulted and did you take part in those conferences?

A. Yes, sir.

Q. Were you familiar with the considerations actuating the Director General in issuing General Order 28?

A. I think so; yes, sir.

Q. Are you familiar with the purposes sought to be
286 achieved by General Order 28?

A. Yes, sir.

Q. Was it intended, by General Order 28, as originally drawn, that double advances should be made on coal under that order?

A. Yes. The order had the effect, and it was the intent of it, that the specific and maximum advances or increases named therein should be applied to each separately established rate.

Q. That is, that where the through rate was made up of combination rates, the flat increase provided by General Order 28 for coal, was to be applied to each factor of the combination rate?

A. Yes.

Q. That was the intent and meaning of General Order 28 as issued by the Director General?

A. Yes, sir.

Q. Will you state what was the reason for the subsequent modification of General Order 28 in this respect, by Freight Rate Authority No. 10?

A. Within a short time, within 10 days, I would say, following the promulgation of General Order 28, which was on May 27, 1918, there was brought to the attention of the Director of Traffic numerous instances where the carrying out of the order as it was written would have the effect of disturbing the relationship on coal and other
287 commodities where specific or maximum advances were made under the order, both between contiguous points of origin or destination, but particularly between the same points of origin and the same points of destination when the traffic moved by different routes, for the reason that if by one route between two certain points the rate was a specifically published through rate, and the specific or maximum advances were applied to that rate, while for another

route, which was open to handle the business, and a reasonably direct route, the same rate had been in effect prior to the issuance of General Order 28, but published by separately established rates——

Q. That is, combination rates?

A. As commonly called. I prefer the Commission's term "separately established rates." The separately established factors make the through charge. Had the specific advances been applied to each of these permanently, then it is manifest that the rates would have been made different, and that all of the traffic would have been routed by the shipper via the line which had happened to carry that charge by a specifically published through rate, and this latter feature of equalizing the rates for the different routes was the controlling feature of the issuance of the instruction which preceded Freight Authority 10.

Q. Was Freight Rate Authority in any way an admission
288 that the application of the double advances, the flat increase to both factors of a combination, or separately established through rate, was unreasonable?

A. No, sir; it was not.

Q. And was there any idea, in the issuance of Freight Rate Authority 10, that reparation should be paid in the interim between the publication of the double advance and the reduction in the single advance under Freight Rate Authority 10?

A. No, sir; that was not contemplated. As a matter of fact, we were working then under war conditions, when a very large part of all freight paid was being passed on to the Government in one form or another, and the conditions were so upset that we did not consider at all at that time that the charges which were assessed temporarily under the provisions of General Order 28, and which were modified afterwards by voluntary concessions in the adjustment of the relationship, as promised by the Director General at the time the order was issued, would be the subject of reparation, or that they could fairly be.

Q. Then, as I understand you, Mr. Hastings, it was not in any way intended by Freight Rate Authority No. 10 to admit that the double advances under General Order 28 were unreasonable in themselves, and the actuating reason for Freight Rate Authority No. 10 was to preserve the relationships between the through rates you have mentioned, where one through rate was constructed on the basis
289 of combination rates, and the other was a joint through rate?

A. That is correct. As I stated the latter reason was the controlling reason. We also had under consideration, and I have no doubt, took into account to a lesser extent, the maintenance of the relationship between contiguous points, adjoining districts, where the rate from one point was carried—take the coal district, for instance, Pennsylvania to New England. It was called to our attention that from the same districts rates via one route were on combination and via another route, specific through rates were published to the same destinations in New England. I don't want to go on record as saying that we considered only the point exactly served by the two routes, but the other points, the contiguous points, in the

same district were naturally affected in the same way, and that was given consideration.

Q. You considered two things; traffic between the same points served by different routes, some of which had joint through rates and some of which had combination rates, and also traffic from mines in the same district to the same or contiguous points of destination?

A. Yes, sir.

Q. Was it intended to preserve any relationship between competing fields by Freight Rate Authority No. 10?

A. It was not considered in that connection.

290 Q. Mr. Hastings, how long did Freight Rate Authority 10 remain in effect on anthracite coal?

A. On anthracite coal to Western Territory, the provisions of Freight Rate Authority 10 were cancelled on April 22, 1919, by Freight Rate Authority No. 6945. I have a copy of that authority here. The authority itself shows pretty clearly why the cancellation was brought about on that particular traffic. I can state it more briefly, though. It was because there was very forcefully brought to the attention of the Administration the fact that the anthracite coal via the rail-lake-and-rail routes, or the rail-and-lake routes to Western destinations was paying, as it was intended it should, and there never have been any modifications of that feature of General Order 28, an advance in the charge to the Lakes and an advance in the charge west of the Lakes; while one road, at least, and possibly others had, under Freight Rate Authority 10, published in its tariff some provision which made what is now known as the single advance on coal from the anthracite field to some points in Western territory, west of Chicago—it is very clear that that sort of action instead of preserving any relationships, disturbed any relationship that might have existed between the rail-and-lake and all-rail routes, and the conclusion was that inasmuch as that was a situation which had not been before us and was not contemplated by Freight

291 Rate Authority 10, although admittedly, if you please, within the knowledge of that authority,—no criticism ran against the road that had made that publication—we cancelled the authority on that traffic, and specifically provided in Freight Rate Authority 6945, that any publication theretofore made under Freight Rate Authority 10, in that situation, should be withdrawn and cancelled under Freight Rate Authority 6945.

Q. Was Freight Rate Authority 10 itself finally cancelled?

A. Freight Rate Authority 10 was finally cancelled on January 17, 1920. For some months previous to that date—in fact, as I recall, about the time that we cancelled it as to the anthracite coal, we had cases coming before us where it appeared that the application of Freight Rate Authority 10 went beyond what was contemplated as needful at the time the authority was issued. The Division of Traffic reached the conclusion that the authority should be cancelled, but for some time there was a difference of opinion in the Division of Public Service as to the method by which this should be brought

about, and no action was taken until January 17, 1920, when the cancellation, as shown in the letter entitled "Cancellation of Freight Rate Authority No. 10" of that date, was issued by the Director of Traffic, with the concurrence of the Division of Public Service.

292 Q. So that it was, by that, originally intended, under Order 28, that the so-called double advances should be made under that order, and finally determined, after experimenting with the single advances, that the double advances should be restored wherever there had not been a change under the original order——

A. Cancellation of Freight Rate Authority 1- is not that broad.

Q. It is not?

A. It says that no further publication should be made under the authority, but specifically states that this cancellation does not authorize the cancellation or revision of rates which already had been published under Freight Rate Authority 10.

Q. I started to add that to my question—without the disturbance of rates that had been reduced to the single advance under Freight Rate Authority 10, the cancellation of Freight Rate Authority 10 forbade the further reduction to the single advance?

A. That is correct.

Q. Mr. Hastings, I don't know whether or not you are familiar with the particular anthracite rates here involved, but I want to ask you, assuming that there were no joint through rates in effect from any points of origin on anthracite coal to any points of destination in these complaints, was that situation within the spirit of

293 Freight Rate Authority 10; even if it was within the letter of it?

A. It was not. I am quite familiar, not with the rates themselves, I couldn't quote any of them from memory, but I am familiar with the rate situation on anthracite coal to Western territory, and your assumption is correct; that there were no joint freight rates published, and that situation manifestly did not come within this that I have described as the reason for issuing Freight Rate Authority 10.

Q. Mr. Hastings, what have you to say as to whether or not General Order 28 was a general percentage increase, and in that connection?

A. Just a minute before we get to that question, Mr. Finerty. I would like to add that what I said a moment ago on anthracite coal is also true on a great deal of the bituminous coal, which I understand is covered by these complaints, namely, the bituminous coal from all fields east of Indiana fields, rates were made by combination of the rates to Western destination and hence the situation there is similar to the situation on the anthracite.

Q. And therefore, while they may have come within the letter of the Freight Rate Authority 10, they were not within the reasons actuating it?

A. That is true.

Q. Now, referring to my question as to whether or not Gen-

294 eral Order 28 was a general increase, with certain excepted commodities; was that the nature of General Order 28?

A. I am glad you brought that up, because while I haven't the benefit of the testimony in this case, I think it is very pertinent to all of these cases which deal with rates under General Order 28. There has very apparently been in the minds of a good many people dealing with these rates, including some of the railroad men, if you please, a misconception of the basis on which General Order 28 was issued. It is referred to occasionally as the "25% order," and we even have expressions from the Commission which would indicate, perhaps, that the man writing the opinion had based his conclusion on the fact that a certain increase was in excess of 25%.

Q. And therefore unreasonable?

A. And therefore unreasonable, and perhaps not in contemplation. I trust without ego-ism I can speak of what was in contemplation. Now, General Order 28 was not prepared as a 25%, or any other per cent order. It was well known to the Director of Traffic, some of his assistants, and traffic men with whom he consulted, that there were many rates in this country which were not bearing a fair share of the burden, and that was particularly true of a good many of the short-haul rates. It was true of some commodities. We could not attempt at that time to cure all such
295 evils in the rate structure of the country, even where they were known and admitted. We had to attempt to iron out some of the more glaring inconsistencies in the existing rate structure. First let me say right there that in March, April and May, 1918, the public was not educated, as it is today, to a general advance in rates, and we had to take into consideration, if you please, what the traffic would bear. Not all it would bear, but what the traffic would bear, even under the condition that existed then, with the increased expenses and proposed increase in wages which was then before the Administration. The Division of Traffic was furnished in these months from time to time by the statistician and the Division of Operations of the Railroad Administration with estimates of the additional revenue that would be needed to carry on the operation of the railroads. These estimates were raised almost from day to day. They handed them in to us several times, and each one was higher than the last. It is a matter of common knowledge, of which I have no doubt the Commission takes judicial notice, that even the last estimate fell far below what was actually necessary, because of further wage increases and further increases in the cost of material and supplies, but, of course, at that time we had to figure on the estimates that were handed to us. It was not within our jurisdiction to
296 go out and say, "These fellows don't know what they are talking about when they estimate eight hundred million or eight hundred and fifty million, or some other figure. We think it is two billion," because we had to figure our rates toward the figures given us by the other branches of the Administration, and in figuring that we took the various commodities which are shown as carrying specific or maximum increases under General Order No. 28, and in determining, from time to time—I think at one time we were figuring on five hundred and fifty million, and later eight hundred and fifty million—how much of that burden could fairly be put on

corn, and coal and bullion and sugar, and other commodities moving in large volume, and when we had that from these statistics which our statisticians were able to get from the Interstate Commerce Commission, we computed the amount of increase that would result from this flat or specific advance. Having reached that compilation, and knowing, also, approximately the amount that had to be raised, according to the figures that were given us then, we reached the 25% figure as the last thing under General Order 28, that being the increase necessary in the residue or remainder of the traffic or equal, as nearly as we could approximate, the total revenues that had to be raised. Now, it was intended that a good many things under General Order 28 should be increased more than 25%. Those increases were determined before the 25% was determined. We knew they were there.

Docket No. 11608.

EXHIBIT No. 3.

Witness, Hoffelder.
Defendants' Date 9-17-1920.
Reporter, Flannery.

Docket 11608.

Statement Showing Rates on Brick, Carloads, Effective June 25, 1918, from Sheridan, Wyo., to Clearmont, Wyo., as Compared with Rates to Other Points in the Same Territory.

From—	To—	Distance.	Rates in cents per 100 pounds.
Sheridan, Wyo	Clearmont, Wyo	38	7
Sheridan, Wyo	Aberdeen, Mont	32	8
Sheridan, Wyo	Littlehorn, Mont	48	10
Sheridan, Wyo	Parkman, Wyo	26	6
Sheridan, Wyo	Wyola, Mont	38	9
Sheridan, Wyo	Ranchester, Wyo	16	5
Sheridan, Wyo	Alger, Wyo	10	4
Sheridan, Wyo	Dietz, Wyo	5	4
Sheridan, Wyo	Monarch, Wyo	11	4
Lovell, Wyo	Hooker, Wyo	3	4
Lovell, Wyo	Kane, Wyo	10	5
Lovell, Wyo	Himes, Wyo	20	7
Lovell, Wyo	Spence, Wyo	26	7

Lovell, Wyo	Stucco, Wyo	30	8
Lovell, Wyo	Greybull, Wyo	38	8
Lovell, Wyo	Basin Shale Works, Spur, Wyo	43	8
Lovell, Wyo	Basin, Wyo	46	9
Lovell, Wyo	Manderson, Wyo	54	10
Worland, Wyo	Colter, Wyo	5	5
Worland, Wyo	Neiber, Wyo	9	5
Worland, Wyo	Catham, Wyo	15	7
Worland, Wyo	Kirby, Wyo	21	7
Worland, Wyo	Lucerne, Wyo	25	8
Worland, Wyo	Thermopolis, Wyo	33	8
Worland, Wyo	Greybull, Wyo,	35	8
Billings, Mont	Hardin, Mont	58	8

Tariff Authority, C., B. & Q. I. C. C. 10610.

Interstate Commerce Commission.

Docket 11608.

Witness, Reid.
Defendant's Date, 9-17-1920.
Reporter, Flannery.

Summary Analysis of Traffic of the Wyoming Railway for the Year Ending July 31, 1919.

Index No.	Commodity.	Tons.	Revenue.	Percentage to total. Tons.	Percentage to total. Revenue.	Ton-miles.	Revenue per ton-mile.
1	Wheat	1,000	$2,401.02	.0400	.0356	26,713	.0898
2	Corn	803	999.39	.0321	.0148	21,759	.0456
3	Oats	474	627.72	.0189	.0093	12,179	.0515
6	Other Mill Products	153	404.05	.0061	.0060	4,012	.1007
7	Hay, Straw and Alfalfa	880	1,148.43	.0502	.0352	22,744	.0505
10	Cottonseed and Products	917	1,292.36	.0367	.0191	25,346	.0510
11	Citrus Fruits	31	203.00	.0012	.0030	886	.2291
12	Other Fresh Fruits	59	256.86	.0024	.0038	1,682	.1526
13	Potatoes	257	707.62	.0103	.0104	7,165	.0988
16	Other Products of Agriculture	522	217.08	.0209	.0032	8,026	.0270
	Total Products of Agriculture.	5,096	$8,257.53	.2038	.1222	130,512	.0633
17	Horses and Mules	256	$435.83	.0102	.0065	7,296	.0597
18	Cattle and Calves	6,685	11,004.99	.2674	.1629	190,187	.0579

19	Sheep and Goats	3,847	7,716.00	.1539	.1143	109,532	.0704
20	Hogs	241	528.20	.0096	.0078	6,625	.0797
26	Wool	797	4,202.64	.0319	.0622	22,742	.1848
	Total Products of Animals	11,826	$23,887.66	.4730	.3537	336,382	.0710
30	Bituminous Coal	717	706.38	.0287	.0104	19,449	.0363
38	Salt	285	1,141.81	.0114	.0169	8,149	.1401
	Total Products of Mines	1,002	$1,848.19	.0401	.0273	27,598	.0669
40	Logs, Posts and Poles	79	317.56	.0031	.0048	2,259	.1406
43	Lumber, Timbers, etc.	2,224	8,222.66	.0890	.1216	56,019	.1468
	Total Products of Forests	2,303	$8,540.22	.0921	.1264	58,278	.1446
45	Refined Petroleum	749	$2,996.55	.0300	.0444	21,008	.1426
47	Sugar, Sirup, etc.	58	303.31	.0023	.0045	1,581	.1918
51	Bar and Sheet Iron	181	777.32	.0072	.0116	5,177	.1501
53	Castings, Machinery, etc.	56	305.53	.0023	.0045	1,589	.1923
54	Cement	460	1,485.32	.0184	.0219	13,098	.1134
55	Brick	231	462.69	.0092	.0069	6,578	.0703
56	Lime	57	232.88	.0023	.0034	1,617	.1440
58	Agricultural Implements	20	108.00	.0008	.0015	570	.1895
59	Automobiles	48	451.45	.0019	.0067	1,359	.3322

Summary Analysis of Traffic of the Wyoming Railway.—Continued.

Index No.	Commodity.	Tons.	Revenue.	Percentage to total. Tons.	Percentage to total. Revenue.	Ton-miles.	Revenue per ton-mile.
60	Household Goods	311	858.18	.0124	.0127	7,337	.1170
62	Beverages	84	392.33	.0034	.0059	2,395	.1637
66	Chemicals and Explosives	23	184.10	.0009	.0027	661	.2785
68	Canned Goods	23	128.54	.0009	.0019	651	.1975
69	Other Manufactures & Misc'l.	472	2,316.45	.0189	.0343	13,163	.1760
	Total Manufactures & Misc'l...	2,773	$11,002.65	.1109	.1629	76,784	.1432
	Grand Total Carload Traffic...	23,000	$53,536.25	.9200	.7911	629,554	.0849
70	Merchandise, all L. C. D.	1,999	$14,001.74	.0800	.2073	54,243	.2581
	Grand Total, Carload & L. C. L.	24,999	$67,537.99	.....	.....	683,797	.0987

EXHIBIT No. 5.

Interstate Commerce Commission.

Docket No. 1108.

Witness, Reid.
Defendants' Date, 9-17-1920.
Reporter, Flannery.

Supplementary Report of Freight Commodity Statistics of the Wyoming Railway for the Year Ending December 31, 1919.

Index No.	Commodity.	No. of carloads.	No. of tons.	Revenue.	Percentage to total. Cars.	Tons.	Revenue.
1	Wheat	26	1,000	$2,401.02	.0176	.0400	.0356
2	Corn	23	803	999.39	.0156	.0321	.0148
3	Oats	16	474	627.72	.0108	.0189	.0093
6	Other Mill Products	6	153	404.05	.0041	.0061	.0060
7	Hay, Straw and Alfalfa	74	880	1,148.43	.0502	.0352	.0170
10	Cottonseed and Products	34	917	1,292.36	.0230	.0367	.0191
11	Citrus Fruits	2	31	203.00	.0014	.0012	.0030
12	Other Fresh Fruits	3	59	256.86	.0020	.0024	.0038
13	Potatoes	15	257	707.62	.0101	.0103	.0104
16	Other Products of Agriculture	13	522	217.08	.0089	.0209	.0032
	Total Products of Agriculture	212	5,096	$8,257.53	.1437	.2038	.1222

Supplementary Report of Freight Commodity Statistics.—Continued.

Index No.	Commodity.	No. of carloads.	No. of tons.	Revenue.	Percentage to total. Cars.	Tons.	Revenue.
17	Horses and Mules	22	256	$435.83	.0149	.0102	.0065
18	Cattle and Calves	560	6,685	11,004.99	.3797	.2674	.1629
19	Sheep and Goats	350	3,847	7,716.00	.2373	.1539	.1143
20	Hogs	28	241	528.20	.0189	.0096	.0078
26	Wool	52	797	4,202.64	.0353	.0319	.0622
	Total Products of Animals	1,012	11,826	$23,887.66	.6861	.4730	.3537
30	Bituminous Coal	23	717	$706.38	.0156	.0287	.0104
38	Salt	12	285	1,141.81	.0081	.0114	.0169
	Total Products of Mines	35	1,002	$1,848.19	.0237	.0401	.0273
40	Logs, Posts and Poles	4	79	$317.56	.0027	.0031	.0048
43	Lumber	71	2,224	8,222.66	.0481	.0890	.1216
	Total Products of Forests	75	2,303	$8,540.22	.0508	.0921	.1264
45	Refined Petroleum	35	749	$2,996.55	.0237	.0300	.0444
47	Sugar	3	58	303.31	.0020	.0023	.0045
51	Bar, Sheet & Struct. Iron	7	181	777.32	.0047	.0072	.0116

53	Castings, Machinery, Boilers.....	3	56	305.53	.0020	.0023	.0045
54	Cement	12	460	1,485.32	.0081	.0184	.0219
55	Brick	9	231	462.69	.0061	.0092	.0069
56	Lime and Plaster.....	3	57	232.88	.0020	.0023	.0034
58	Agricultural Implements	2	20	108.00	.0014	.0008	.0015
59	Automobiles	8	48	451.45	.0054	.0019	.0067
60	Household Goods & S. H. Furn.....	29	311	858.18	.0197	.0124	.0127
62	Beverages	5	84	392.33	.0034	.0034	.0059
66	Chemicals & Explosives.....	2	23	184.10	.0014	.0009	.0027
68	Canned Goods	1	23	128.54	.0007	.0009	.0019
69	Other Manufactures & Misc'l.....	22	472	2,316.45	.0149	.0189	.0343
	Total Manufactures & Miscellaneous	141	2,773	$11,002.65	.0955	.1109	.1629
	Grand Total, Carload Traffic..	1,475	23,000	$53,536.25	....	.9200	.7911
70	Merchandise, all L. C. L.....	....	1,999	$14,001.74	....	.0800	.2073
	Grand Total, Carload & L. C. L.	1,475	24,999	$67,537.99	....	....	....

EXHIBIT No. 6.

Interstate Commerce Commission.

Docket No. 11608.

Witness, Reid.
Defendant's Date, 9-17-1920.
Reporter, Flannery.

Supplementary Report of Freight Commodity Statistics of the Wyoming Railway, for the Year Ending December 31, 1919.

Index No.	Commodity.	State traffic. Tons.	State traffic. Revenue.	State traffic. Per cent rev.	Interstate traffic. Tons.	Interstate traffic. Revenue.	Interstate traffic. Per cent rev.
1	Wheat	122	286.31	.1192	878	$2,114.71	.8808
2	Corn	20	46.00	.0461	783	953.39	.9539
3	Oats	168	284.97	.4540	306	342.75	.5460
6	Other Mill Products	25	40.00	.0990	128	364.05	.9010
7	Hay, Straw & Alfalfa	57	73.08	.0636	823	1,075.35	.9364
10	Cottonseed Products	92	108.32	.0838	825	1,184.04	.9162
11	Citrus Fruits	....	.....	.....	31	203.00	1.00
12	Other fresh fruits	40	152.08	.5921	19	104.78	.4079
13	Potatoes	35	98.34	.1390	222	609.28	.8610
16	Other Products of Agriculture	522	217.08	1.00	....	.....	.....
	Total Products of Agriculture.	1,081	$1,306.18	.1582	4,015	$6,951.35	.8418

17	Horses	24	$39.00	.0895	232	$396.83	.9105
18	Cattle and Calves	249	394.91	.0359	6,436	10,610.08	.9641
19	Sheep	33	58.50	.0076	3,814	7,657.50	.9924
20	Hogs	51	80.00	.1515	190	448.20	.8485
26	Wool	....	.....	.....	797	4,202.64	1.00
	Total Products of Animals....	357	$572.41	.0240	11,469	$23,315.25	.9760
30	Bituminous Coal	686	$647.95	.9172	31	$58.43	.0828
38	Salt	....	.....	.....	285	1,141.81	1.00
	Total Products of Mines.....	686	$647.95	.3504	316	$1,200.24	.6494
40	Logs, Posts, Poles	....	.....	.....	79	$317.56	1.00
43	Lumber	220	404.01	.0492	2,004	7,818.65	.9508
	Total Products of Forests.....	220	$404.01	.0473	2,083	$8,136.21	.9527
45	Refined Petroleum	725	$2,901.07	.9682	24	$95.48	.0318
47	Sugar, Sirup, etc.	58	303.31	1.00	....	.....	.....
51	Bar, Structural iron & Pipe	....	.....	.....	181	777.32	1.00
53	Castings, machinery & Boilers	....	.....	.....	56	305.53	1.00
54	Cement	....	.....	.....	460	1,485.32	1.00
55	Brick	179	358.47	.7531	52	104.22	.2469
56	Lime and Plaster	....	.....	.....	57	232.88	1.00

Supplementary Report of Freight Commodity Statistics.—Continued.

Index No.	Commodity.	State traffic. Tons.	State traffic. Revenue.	State traffic. Per cent rev.	Interstate traffic. Tons.	Interstate traffic. Revenue.	Interstate traffic. Per cent rev.
58	Agricultural Implements	....	.....	.....	20	108.00	1.00
59	Automobiles	....	.....	.....	48	451.45	1.00
60	Household Goods	41	93.32	.1088	270	764.86	.8912
62	Beverages	52	235.72	.6266	32	156.61	.3734
66	Chemicals and Explosives	10	60.00	.3259	13	124.10	.6740
68	Canned Goods	....	.....	.....	23	128.54	1.00
69	Other Manufactures & Misc'l.	144	694.53	.2999	328	1,621.92	.7001
	Total Manufactures & Miscellaneous	1,209	$4,646.42	.4224	1,564	$6,356.23	.5776
	Grand Total Carload Traffic	3,553	$7,576.97	.1405	17,447	$45,959.28	.8595
70	Merchandise, all L. C. D.	765	$4,034.88	.2889	1,234	$9,966.86	.7111
	Grand Total Carload and L. C. L.	4,318	$11,611.85	.1720	20,681	$55,926.14	.8280

EXHIBIT No. 7.

Interstate Commerce Commission.

Docket No. 11608.

Witness, Belt.
Defendants' Date, 9-17-1920.
Reporter, Flannery.

Trial Balance, Wyoming Railway Company, December 31, 1920.

	Total.	Liabilities or assets.		Profit & loss, 12 mos.	
		Fixed.	Current.	Reserves, suspense accts.	Revenue operation.
Capital Stock	$1,000,000.00	$1,000,000.00	.....	.....	.....
Bonds	536,000.00	536,000.00	.....	.....	.....
Current Liabilities	117,452.70	.....	$117,452.70	.....	.....
Unadjusted Credits	2,709.54	.....	.....	2,709.54	.....
Revenue	92,897.11	.....	.....	.....	92,897.11
	$1,749,059.35	$1,536,000.00	$117,452.70	$2,709.54	$92,897.11
Ways and Structures	$1,388,267.25	1,388,267.25	.....	.....	.....
Equip. & Gen'l Invest.	126,715.86	126,715.86	.....	.....	.....
Supplies	3,211.83	.....	3,211.83	.....	.....
Cash	5,514.21	.....	5,514.21	.....	.....
Bills & Accts. Rec.	13,991.06	.....	13,991.06	.....	.....

Trial Balance.—Continued.

	Total.	Liabilities or assets.		Profit & loss, 12 mos.	
		Fixed.	Current.	Reserves, suspense accts.	Revenue operation.
Due from Ry. Agents.....	[7,165.09]*	.....	[7,165.09]*	.....	.....
Unadjusted Debits.....	60,160.45	.....	.....	60,160.45	.....
Operating Expense.....	72,618.86	.....	.....	.....	72,618.86
Income Debits	45,196.14	.....	.....	45,196.14	.....
Profit and Loss.....	40,548.78	.....	.....	40,548.78	.....
	$1,749,059.35	$1,514,983.11	$15,552.01	$145,905.37	$72,618.86

(Here follows statement marked page 302.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

ARCHIVE

303 Mailed by Interstate Commerce Commission May 7, 1921.

Filed by Interstate Commerce Commission May 7, 1921. H. H.

Interstate Commerce Commission.

No. 11608.

PIONEER LUMBER COMPANY et al.

v.

DIRECTOR GENERAL, as Agent; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al.

Submitted —— —, 1921. Decided —— —, 1921.

Rates on lumber and lumber products from points in Idaho, Montana, and Washington to Ucross and Buffalo, Wyo., found not unreasonable, but unduly prejudicial. Rates on brick from Sheridan, Wyo., to Buffalo found not unreasonable. Reparation denied.

J. B. Campbell and R. S. Brown for complainants.

F. G. Dorety and R. J. Hagman for all defendants except Wyoming Railway, Burt Griggs and Alden, Latham & Young for Wyoming Railway.

Report Proposed by F. W. McM. Woodrow, Examiner.

Complainants, The Pioneer Lumber Company and The Buffalo Lumber Company, are corporations engaged in the lumber and fuel business with offices at Buffalo, Wyo. By complaint filed July 7, 1920, they allege that the rates charged on interstate carload shipments of lumber and lumber products from points in the states of Idaho, Montana and Washington, to Buffalo and Ucross, Wyo., and on intrastate shipments of brick from Sheridan, Wyo., to Buffalo were unreasonable, unjustly discriminatory and unduly prejudicial in violation of sections 1, 2 and 3 of the act to regulate commerce and section 10 of the Federal control act. Reparation is sought, and reasonable and non-prejudicial rates are requested for the
304 future on all interstate shipments. Rates will be stated herein in amounts per 100 pounds.

The shipments moved over the lines of the defendants and apparently the applicable rates were collected based upon the Clearmont, Wyo., combination. Complainants seek reparation down to the basis of the rates that would have been applicable if the increases provided in General Order No. 28 of the Director General had been applied to the total rates and not to the separate factors thereof. At the hearing it was claimed that that should be the measure of

reparation during Federal control but that subsequent thereto reparation ought to be based upon the rates contemporaneously in effect to Clearmont, which complainants contend were and are reasonable for application to Buffalo and Ucross. The main issue, aside from reparation, is whether or not the Clearmont rates shall be for the future extended to Buffalo and Ucross. At the hearing no testimony was given to support the allegation as to the violation of section 2.

Buffalo and Ucross are located on the Wyoming Railway Company. It connects at Clearmont with the main line of the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington, and extends southwesterly for a distance of 28.6 miles. Buffalo is at its terminus and is a town of about 1,800 inhabitants. Ucross is 10 miles from Clearmont and has a population of about 100. The lumber and lumber products rates in the northwest have for many years been blanketed both as to points of origin and destination. In the so-called Northwest Lumber Cases, 14 I. C. C., 1, 23, 41, 51, decided June 2, 1908, the Commission prescribed,
305 among other things, reasonable rates from points of origin to Clearmont which is embraced in the so-called "blanket territory." The respective specific factors to Clearmont here in issue on lumber and lumber products are the rates thus prescribed by the Commission, as increased under General Order No. 28, and Increased Rates, 1920, 58 I. C. C. 220. The Wyoming Railway Company was organized in 1910, construction was commenced in 1913 and completed in 1918. The Clearmont rates have not been extended by the Burlington to stations located on the Wyoming Railway Company, therefore, the Wyoming Railway Company charges its local rates from Clearmont to destinations.

The first issue presented is: Did increasing each factor under General Order No. 28 result in unreasonable rates? General Order No. 28 provided that rates on lumber and lumber products should be increased 26 per cent, maximum 5 cents, and that rates on brick should receive a flat increase of 2 cents. By applying these increases to each factor instead of the combined factors there resulted an additional charge of 4 cents to Buffalo and 2 cents to Ucross on lumber and lumber products and of 2 cents on brick to Buffalo. Complainants claim that the Director General never intended that the increases should be applied to each factor, and that this is shown by his freight rate authority No. 10 of July 2, 1918, which directed among other things that the tariffs be revised so that the increases in General Order No. 28 would be applicable to the total rates. The Wyoming Railway Company increased its rates under General Order No. 28 and the record shows that on June 29, 1918, it was released
306 from Federal control. Its rates were not changed in accordance with freight rate authority No. 10. With respect to the rates on brick complainants rely solely upon the fact that each factor of the combination was increased under General Order No. 28. The reasonableness of the rates in question is not determinable solely from the method of their construction. Defendants show that the rates on brick assailed compare favorably with other similar

rates in this general territory. Following National Supply Co. v. C. M. & St. P. Ry. Co., 57 I. C. C. 739; Pine Plume Lumber Co. v. D. G. and A. C. L. R. R. Co., et al., 59 I. C. C. 371, the Commission should find that the rates on brick assailed were not unreasonable.

The Coast group rate to Clearmont June 25, 1918 on lumber was 45 cents and from the Spokane group the rate was 38 cents. From Clearmont to Buffalo the rate was 20 cents, making combination rates of 65 and 58 cents respectively. The present Coast Group rate, is 81½ cents and the present Spokane rate is 72½ cents. The factors up to Clearmont are 56½ and 47½ cents respectively. Complainants filed exhibits which showed the ton-mile and car-mile earnings on the various lumber shipments. These earnings were compared with earnings that would have accrued if shipments had moved to other destinations in the blanket which took the Clearmont rates, for example, there was a shipment of fir lumber from National, Wash., to Buffalo, a distance of 1,270 miles that earned 10.2 mills per ton-mile and under the present rates it would have earned 12.8 mills per ton-mile. This shipment, if it had moved to Spearfish, S Dak., a distance of 1,556 miles would have produced 5.7 mills per ton-mile and would not produce 7.2 mills per ton-mile under
307 the present blanket rate. The rates to Birds, Colo., a distance of 1,676 miles, on this shipment would have earned 5.3 mills and 6.7 mills per ton-mile, respectively. Complainants show also *so* that the factor up to Clearmont on this shipment produced 7.2 mills per ton-mile and that the factor from Clearmont to Buffalo earned 14.03 mills per ton-mile. They point out that the average per ton-mile earnings for the various roads on all traffic during 1918 were as follows:

Burlington	7.38	mills.
Milwaukee	8.4	"
Great Northern	8.7	"
Northern Pacific	8.19	"

The present 81½ cent rate from Everett, Wash., to Buffalo, a distance of 1,128 miles, based on a load of 63,760 pounds, the average load of fir lumber as given in Increased Rates, 1920, supra, by the West Coast Lumbermen's Association, produces per car-mile earnings of 46.06 cents, while the present Everett-Clearmont rate of 56½ cents produced per car-mile earnings of 32.77 cents. If the Clearmont rate were granted Buffalo, the per car mile earnings would be 31.93 cents. The rate from Everett to Birds earns per car-mile revenue of 21.45 cents.

The defendants maintain that complainants' exhibits are of little value because blanket rates are compared with blanket rates and the specific earnings vary with the distances used. They contend that complainants should show the average point of origin and the average point of destination in the respective blankets. They further contend that the factors of the lumber rates up to Clearmont were Commission made rates, established in 1908, as increased by General Order No. 28 and under Increased Rates, 1920, supra, and therefore, are in and of themselves reasonable.

308 Defendants show that the Wyoming Railway Company lost in the operation of its railroad $46,408.72 in 1918 and $24,917.89 in 1919; that no interest had been paid on its bonds for nearly three years; that no dividends have ever been paid on its stock; that its officers and directors have received no salaries; that although only 28.6 miles in length Buffalo is nearly a thousand feet higher than Clearmont and that the road is operated through a sparsely settled country with no present expectation of increased traffic.

A careful weighing of this evidence compels the conclusion that the combination rates on lumber were not and are not unreasonable per se. Carriers, however, are in duty bound not only to charge reasonable rates but those rates must also not result in an undue or unreasonable preference or advantage to any locality. The remaining question, therefore, is, did the failure of the defendants to extend the blanket rates to points on the line of the Wyoming Railway Company result in undue or unreasonable prejudice to complainants?

The complainant, The Pioneer Lumber Company, has lumber yards at Sheridan and Ucross as well as at Buffalo, while the complainant, The Buffalo Lumber Company, has yards at Buffalo and Kaycee, Wyo., which is about 60 miles south of Buffalo. Sheridan is 38 miles north of Buffalo by dirt road. The testimony shows that it is customary for farmers who live within 8 miles of Buffalo to buy their lumber in Buffalo, but those who live farther away than that make their purchases at Sheridan. There is a divide known as Tunnel Hill about midway between Sheridan and Buffalo and save for the more favorable freight rates to Sheridan the record
309 shows that Buffalo would probably receive the business of all those who live south of the divide. Ulm, Wyo., is on the Burlington just west of Clearmont. Competitors of the Pioneer Lumber Company located at those points are enabled by reason of their lower rates to secure trade which otherwise would go to Ucross. Casper, Wyo., is on the Big Horn division of the Burlington about 135 miles south of Buffalo and 75 miles south of Kaycee and takes the blanket rate. The Buffalo Lumber Company has a yard *at* Kaycee, Wyo., which is not served by railroad, and which is approximately half way across country, between Buffalo and Casper. This complainant hauls its lumber from Buffalo to Kaycee by truck. Just prior to the hearing oil was discovered about 10 miles south of Kaycee and the Buffalo Lumber Company insist that the blanket rate should be extended to Buffalo in order that it may use its yards at that point and haul lumber to Kaycee so that it may be able to compete in the oil field with its Casper competitors.

The complainants point out that Spearfish and Deadwood, S. Dak. are located on the branch line of the Burlington that connects with the main line at Edgemont, S. Dak. Edgemont is 124.4 miles distant from Clearmont, and Spearfish and Deadwood are 130 and 107 miles distant, respectively, from Edgemont. Both Spearfish and Deadwood have the blanket rates. Complainants show that Birds, about 400 miles more distant from points of origin than Clearmont, located upon the Great Western Railway an independent line 82

miles long, takes the blanket rates. They contend that the fact that the defendants voluntarily apply the blanket rates to these
310 points, and the further fact that defendants willingly maintain the extensive blanket, while refusing to extend blanket rates to points on the Wyoming Railway results in unjust discrimination and undue prejudice.

The defendants say that they only extend blanket rates to points on independent short lines when compelled to do so by competition. The Burlington extends the blanket rate from a point about 70 miles south of Billings, Mont., for a distance of about 600 miles through Alliance, Nebr., to Denver, Colo. The defendants assert that this blanket was established to meet competition on lumber from California via the Harriman lines. At that time the Big Horn Division of the Burlington had not been completed and to compete with the Union Pacific at Denver, the Burlington had to haul lumber received from the Great Northern and the Northern Pacific via its Sheridan route through Alliance. The defendants claim that if the former rate had not been blanketed fourth section violations would have been created along the Sheridan line. This reason would not account for the Burlington's extending the blanket to Spearfish an additional haul from Edgemont, as seen above, of 130 miles. The defendants explain that conditions with respect to Birds are entirely different and that competitive reasons compelled the extension of the blanket rates to Birds. They show that the Great Western has two connections with the Union Pacific, one at Eaton, Colo., and one at Kelim, Colo.; two connections with the Colorado and Southern, one at Loveland, Colo., and one at Windsor, Colo., and the connection with the Burlington at Longmont, Colo. They contend that there is no relation between the Birds and the Buffalo situa-
311 tions.

If a trunk line carrier publishes the same blanket rate on lumber in carloads to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch line why should not a shipper situated on an independant branch line connecting with this blanketed stretch of the main line be entitled to the same blanket rate especially where the haul over the independent branch line is not in excess of the average haul over the trunk line's own branch lines? The defendants say that it is cheaper to perform a given service for equal distances between points located on a trunk line or on a trunk line's branch line, than between points located on an independent line. This may be true but it is difficult to reach the conclusion that it is cheaper for the Burlington to perform the service from Edgemont to Spearfish than for the Wyoming Railway Company to perform the service from Clearmont to Buffalo. The mileage from Edgemont to Spearfish is over 4½ times greater than that to Buffalo.

Trunk lines should not be permitted arbitrarily to extend the blanket rates to all points on their branch lines regardless of distance and at the same time refuse to extend those rates to points, not more distant from the main line than Buffalo, on independent lines

situated as is the Wyoming Railway Company. The question of divisions, whether or not the Wyoming Railway Company should receive its full local or only part thereof, does not enter into this case.

312 The equities demand that points located on the Wyoming Railway Company be accorded the Blanket lumber rates, provided the Burlington continues to extend those rates to points such as Spearfish and Deadwood on its Edgemont Division.

No competition is shown of record between complainants and lumber dealers situated on the Edgemont division. However, these localities might be unduly preferred within the meaning of section 3. The Commission said in Three Lakes Lumber Co. v. W. W. Ry. Co., 61 I. C. C. 408, 414:

The inhibition of Section 3 of the interstate commerce act against undue prejudice applies to localities as well as to shippers at those localities. A shipper who contemplates locating a mill at Machias, for example, has a right to rely upon an analagous basis of rates being published in defendants' tariffs in determining the advantages of locating at that point.

The Commission should find that the interstate rates on lumber and lumber peoducts and the intrastate rates on brick here in issue were not unreasonable but that the failure to extend the blanket lumber rates to Buffalo and Ucross on the line of the Wyoming Railway Company, while at the same time maintaining the blanket rates to Clearmont and Sheridan, is unduly prejudicial. No damage is shown, so reparation should be denied. An appropriate order should be entered.

313 In the District Court of the United States, District of Wyoming.

In Equity.

#1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Stipulation.

It is hereby stipulated by and between the attorney for the above named plaintiff and by the attorney for the above named defendant, that the time for the filing of the record of said cause with the Clerk of the Supreme Court of the United States and the docketing of said cause by said Clerk be extended until and including Tuesday, the sixteenth day of May, A. D. 1922.

Dated 29th day of March, 1922.

A. C. CAMPBELL,
Attorney for the Plaintiff.
ALBERT D. WALTON,
Attorney for the Defendant.

Endorsements: No. 1235 Civil. In the District Court of the United States, District of Wyoming. Wyoming Railway Company, Complainant, vs. United States, Defendant. Stipulation. #1235 in Equity. Filed March 30, 1922. Charles J. Ohnhaus, Clerk.

314 In the District Court of the United States, District of Wyoming.

In Equity.

#1235.

WYOMING RAILWAY COMPANY, Complainant,

vs.

UNITED STATES, Defendant.

Order.

On this day came the above named plaintiff, the Wyoming Railway Company, by its attorney, A. C. Campbell, also came the United States by its attorney, A. D. Walton, and present the Stipulation wherein and whereby it is agreed that the time for the filing of the record of said cause with the Clerk of the Supreme Court of the United States and the docketing of said cause by said Clerk be extended to and including Tuesday, the sixteenth day of May A. D. 1922. Whereupon it is

Ordered, that the time for the filing of the record of said cause with the Clerk of said Court and the docketing of said cause by said Clerk be extended to and including Tuesday, the sixteenth day of May, A. D. 1922.

Dated 30 day of March 1922.

T. BLAKE KENNEDY,
Judge.

Endorsements: No. 1235 Civil. In the District Court of the United States District of Wyoming. Wyoming Railway Company, Complainant, vs. United States, Defendant. Order. #1235 in Equity. Filed March 30, 1922. Charles J. Ohnhaus, Clerk.

315 UNITED STATES OF AMERICA,
District of Wyoming, ss:

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of the record and proceedings, and of all thereof, as directed by precipe for transcript, in a certain cause lately in said court pending wherein Wyoming Railway Company is complainant and United States is defendant, as full and complete as the same still remains on file and of record in my office at Cheyenne, Wyoming.

In testimony to the above, I do hereto sign my name and affix the seal of the said court at Cheyenne, Wyoming, in said District, this tenth day of April, A. D. 1922.

[Seal of the United States District Court, District of Wyoming.]

CHARLES J. OHNHAUS,
Clerk of the United States District Court for the District of Wyoming.

Endorsed on cover: File No. 28,844. Wyoming D. C. U. S. Term No. 338. Wyoming Railway Company, appellant, vs. The United States of America and Interstate Commerce Commision. Filed April 19th, 1922. File No. 28,844.